

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

MANOJ KUMAR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:08-cv-2689-BBD-tmp
	)	
HILTON HOTELS CORP.,	)	
	)	
Defendant.	)	

---

**JURY INSTRUCTIONS**

---

Members of the Jury:

You have now heard all of the evidence in the case. I will now instruct you on the law, after which you will hear closing arguments of the parties.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case -- that is, in reaching your decision as to the facts -- it is your sworn duty to follow the law I am now in the process of defining for you.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

Now let me outline for you the parts of the charge so that you can follow it more easily. First, I will instruct you as to the burden of proof and upon which party the law places that burden in the case, and I will give you some rules to help you as you consider the evidence. Second, I will outline for you the law to apply in determining the legal issues with respect to liability. Third, I will instruct you on the law with respect to damages. Finally, I will explain to you about the form of your verdict.

In this case, the Plaintiff, Manoj Kumar, (“Plaintiff” or “Mr. Kumar”) brings claims of national origin and alienage discrimination and retaliation against Defendant Hilton Hotels Corporation (“Defendant” or “Hilton”). Mr. Kumar claims that Hilton intentionally discriminated against him because of his national origin and citizenship status and retaliated against him for engaging in protected activities by refusing to allow him to interview for the position of Director of

Development, issuing him repeated written warnings, and, ultimately, terminating his employment.

Hilton denies these claims. Hilton contends that its decision to refuse to allow Mr. Kumar to apply for the position and to terminate his employment was based on his poor performance. According to Hilton the decision had nothing to do with Mr. Kumar's national origin or citizenship status or Mr. Kumar's alleged protected activities.

#### Burden of Proof

Where, as in this case, Defendant explains its employment decision concerning Plaintiff in nondiscriminatory terms, Mr. Kumar must prove by a preponderance of the evidence that the motivating factor for Hilton's alleged adverse actions was based on national origin or citizenship. Mere disbelief of the reasons Hilton offers in support of its decision does not compel a judgment in Mr. Kumar's favor. For example, you must believe Mr. Kumar's explanation that national origin or alienage was a motivating factor not to allow him to apply for the Director of Development position. You may, for instance, not believe that Hilton failed to offer him the Director of Development position for the reasons stated (Mr. Kumar was not qualified) and still conclude that it was not motivated by Mr. Kumar's national origin or alienage or any other unlawful motive. For another example, you must believe that Mr. Kumar's alleged protected activities caused

Hilton to retaliate against him by failing to promote him, by demoting him, by disciplining him, and ultimately, by terminating his employment. You may, for instance, not believe that Hilton terminated Mr. Kumar's employment for the reasons stated (unsatisfactory performance) and still conclude that there is no causal relationship between Mr. Kumar's alleged protected activities and any adverse actions he may have suffered.

#### Preponderance of the Evidence

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of Plaintiff's claim by a preponderance of the evidence in the case, the jury should find for Defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In this case the burden is on Plaintiff to prove every essential part of his claim by a preponderance of the evidence.

A preponderance of the evidence simply means evidence that, when it is considered with and compared to opposing evidence, persuades you that Plaintiff's claim is more likely true than not true.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Plaintiff bears the burden of proof on all claims, elements of his claims, and damages that flow therefrom.

The burden of proving that Mr. Kumar was discriminated or retaliated against remains with Plaintiff throughout the case. In deciding whether Defendant intentionally discriminated or retaliated against Plaintiff because of impermissible factors, your job is to determine what motivated the person or persons who decided

against promoting him or who decided to terminate Mr. Kumar, or to otherwise treat Mr. Kumar adversely.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees. In general, an agent or employee of the corporation may bind the corporation by his or her acts and declarations made while acting within the scope of authority delegated by the corporation, or within the scope of his or her duties as an employee of the corporation.

#### Credibility of Witnesses

You, as members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you, and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he testified; the intelligence or lack of intelligence of

the witness; the interest of the witness in the result of the lawsuit; if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which ones of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness' testimony, but material discrepancies do.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular

state of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you, as jurors, are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then the jury must find against that party upon whom the burden of proof has been cast in accordance with these instructions.

All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Evidence in the Case – Stipulations – Judicial Notice – Inferences Permitted

Statements and arguments of counsel are not evidence in the case. When, however, the Plaintiff's and Defendant's attorneys stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you must, unless otherwise instructed, accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded. Also remember that what the attorneys say is not evidence.

## Direct and Circumstantial Evidence

There are two kinds of evidence -- direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

### Deposition Testimony

Certain testimony has been read into evidence from depositions. A deposition is testimony taken under oath before the trial and preserved in writing and/or videotape. You are to consider that testimony as if it had been given in court.

### Witnesses with Specialized Knowledge or Expert Witnesses

You have heard the testimony of Dr. Chris Ann Shrio-Geist, professor and vocational and occupational counselor, Dr. Richard Edelman, Professor of Economics, and Dr. Pia DiGirolamo, forensic economist, who all testified as expert witnesses.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession, or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion and in resolving conflicts in the testimony of differing expert witnesses, you should consider qualifications and credibility of the expert or experts, as well as the reasons, the facts and any other matters upon

which any opinion is based. You are not bound by any expert opinion. Give it the weight, if any, to which you think it is entitled.

You do not have to accept the testimony of an expert witness. In deciding how much weight to give it, you should consider the witness's qualifications and how s/he reached his or her conclusions. Also consider the other factors discussed in these instructions for weighing the credibility of witnesses.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

#### Corporation Not To Be Prejudiced

The fact that Hilton Hotels is a corporation and is a party must not prejudice you in your deliberations or in your verdict.

You may not discriminate between corporations and natural individuals. Both are persons in the eyes of the law, and both are entitled to the same fair and impartial consideration and to justice by the same legal standards.

#### Law

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty, but it is your duty, and yours alone, to determine what the facts are and after you

have determined what the facts are, to apply those facts the law as I give it to you, free from any bias, prejudice or sympathy, either one way or the other.

Title VII of the Civil Rights Act: Purpose

The Civil Rights Act is not intended as a vehicle for judicial review of employment decisions that are not the result of discrimination. Although the Civil Rights Act requires that an employer reach employment decisions without unlawfully discriminating, it does not place an affirmative duty upon an employer to accord special treatment to an employee. An employer has the right to make business decisions, including selection decisions such as those at issue in this case, for good, bad, or no reason at all, as long as they don't constitute discrimination. The law does not expose an employer to liability merely because the employer may have misjudged an employee's job performance or made a personnel decision that was unwise or ill-advised. It is not your function in this case to second-guess the wisdom of any employment action which affected Plaintiff. Thus, even if you personally disagree with the actions that were taken or believe that they were harsh or unreasonable, if you find that discrimination was not a motivating factor for the actions, then you must return a verdict in Defendant's favor.

## National Origin Discrimination: Relevant Provision of Title VII

Mr. Kumar's national origin discrimination claim is brought under a federal statute known as Title VII. Under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a):

It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Mr. Kumar's national origin discrimination claim is also brought under a Tennessee statute known as the Tennessee Human Rights Act ("THRA"). Under Tenn. Code 4-21-401(a)(1), it is a discriminatory practice for an employer to "[f]ail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin." The THRA was intended to be coextensive with federal law. Thus, THRA claims are analyzed in an identical manner to Title VII discrimination claims.

## National Origin Discrimination: Title VII Elements

In order for Plaintiff to establish his claim of intentional discrimination by Defendant, Plaintiff has the burden of proving that Defendant affected the terms, conditions, and privileges of his employment because of his national origin.

In order for Plaintiff to establish his claim of intentional discrimination by Defendant, Plaintiff has the burden of proving the following essential elements by a preponderance of the evidence:

1. Plaintiff is a member of a protected class;
2. who performed his job satisfactorily (or who was qualified for a new position),
3. who suffered an adverse employment action,
4. that he suffered unlawful discrimination.

Mr. Kumar need not show that national origin discrimination was the only or predominant factor that motivated Hilton. In fact, you may decide that other factors were involved as well in Hilton's decision making process. In that event, in order for you to find for Mr. Kumar, you must find that he has proven that, although there were other factors, he would not have been refused promotion and terminated without the national origin discrimination.

Mr. Kumar is not required to produce direct evidence of unlawful motive. You may infer knowledge and/or motive as a matter of reason and common sense from the existence of other facts.

#### Adverse Employment Action

An “adverse employment action” is one that, standing alone, actually causes damage, tangible or intangible, to an employee. The fact that an employee is unhappy with something his or her employer did or failed to do is not enough to make that act or omission an adverse employment action. An employer takes adverse action against an employee only if it: (1) takes something of consequence away from the employee, for example by discharging or demoting the employee, reducing his or her salary, or taking away significant responsibilities; or (2) fails to give the employee something that is a customary benefit of the employment relationship, for example, by failing to follow a customary practice of considering the employee for promotion after a particular period of service. An adverse employment action by a supervisor is an action of the employer.

#### Business Judgment

It is not your role to second guess Hilton’s business judgment. Standing alone, honest errors in business judgment do not establish discrimination. Even if you were to decide that the failure to promote and termination was neither fair nor

wise nor professionally handled, that would not be enough. In order to succeed on the discrimination claim, Mr. Kumar must persuade you by a preponderance of the evidence that were it not for national origin discrimination, he would not have been refused promotion and terminated. An employer is entitled under the law to take employment actions against an employee based on subjective business judgments or for any non-discriminatory or non-retaliatory reason at all, so long as it is not because of Plaintiff's national origin or alienage or Plaintiff's protected activities.

#### Good Faith Errors

Good faith errors in an employer's business judgment, standing alone, are not evidence of discrimination or retaliation.

#### Plaintiff's Subjective Belief

Any generalized or conclusory testimony presented by Plaintiff regarding his subjective belief that his treatment was the result of discrimination or retaliation is insufficient to prove by a preponderance of the evidence that Plaintiff was (1) discriminated against because of his national origin or citizenship and/or (2) retaliated against for engaging in protected activity.

## Section 1981: Purpose

Plaintiff Manoj Kumar also has asserted a claim against Defendant Hilton based on Section 1981 of the Civil Rights Act (“Section 1981”). Section 1981 prohibits alienage discrimination in, among other things, the making and enforcement of contracts, including contracts of at-will employment. Section 1981 claims of discrimination based upon alienage are analyzed under the same framework as Title VII discrimination claims.

Section 1981 of Title 42 of the United States Code provides in pertinent part that:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

### Alienage/Citizenship Discrimination: Section 1981 Elements

To establish a claim of alienage discrimination under Section 1981, the Plaintiff must prove the following elements of his case:

1. That he is an alien;
2. That Hilton intended to discriminate on the basis of alienage; and
3. That the discrimination interfered with the plaintiff’s right to make and enforce at-will contracts.

Mr. Kumar may show through circumstantial or direct evidence that he has been discriminated against to satisfy the elements of the Section 1981 claim.

Retaliation: Title VII, Section 1981, and THRA

Mr. Kumar has also made a claim of retaliation against Hilton in violation of Title VII, Section 1981 and the THRA. Title VII provides in pertinent part:

It shall be an unlawful employment practice for an employer to discriminate against any of [its] employees . . . because [the employee] has opposed any practice made an unlawful employment practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].

42 U.S.C. § 2000e-3(a). The analysis of a claim of retaliation is identical under these laws.

Retaliation: Title VII, Section 1981 and THRA Elements

Plaintiff must satisfy a four-prong test as to each discrete act of alleged retaliation in order to prove retaliation. Plaintiff must prove by a preponderance of the evidence:

- (1) that Plaintiff engaged in protected activity by making an oral or written complaint of discrimination;
- (2) that Defendant knew of Plaintiff's protected conduct;

- (3) that Plaintiff suffered an adverse employment action (You will refer to the definition of adverse employment action provided earlier); and
- (4) that a causal connection existed between the protected activity and the adverse action, in other words, that Plaintiff's engaging in protected activity was a motivating factor in Hilton's adverse employment action.

To establish the fourth element—that there was a causal connection between Plaintiff's protected activity and Plaintiff's termination—Plaintiff must establish that his protected activity was the likely reason for the adverse employment action allegedly taken against him. The fact that Plaintiff was terminated after Plaintiff engaged in protected activity is not sufficient, by itself, to establish that the protected activity was a significant factor in the termination.

If you find that Plaintiff has failed to prove any one of these four elements, then you must find for Defendant. If you decide that Plaintiff has proven each of these four elements by a preponderance of the evidence and has proven unlawful retaliation, then your verdict must be for Plaintiff.

#### Inference of a Causal Connection

The proximity in time between protected activity and the decision to terminate Plaintiff may give rise to an inference of a causal connection between the protected activity and the decision to terminate the Plaintiff.

However, temporal proximity alone will not support an inference in the face of compelling evidence that Plaintiff would have been terminated or treated adversely regardless of whether he participated in the protected activity.

#### Employer's Business Decisions

Title VII, the THRA, and § 1981 do not forbid Defendant from changing its expectations of employee performance or the qualifications required for a position as long as the changes are not made for discriminatory reasons or in retaliation for Plaintiff's exercising his rights under those laws. An employer is free to set whatever performance standards it wants, provided they are not based on unlawful discrimination or retaliation. Even if Defendant may have made a mistake or misjudged the qualifications or performance of Plaintiff, this is irrelevant as long as the decision was not the result of an unlawful discrimination.

#### Damages

There is only one trial of all the issues in this case. At the end of this trial you, the jury, will have to decide, based on the facts and on the rules of law on which I am instructing you, first, whether Defendant is liable and, if so, the monetary amount of each Plaintiff's damages. Defendant has just this opportunity

to present evidence upon which you may decide issues of liability and, only if you find Defendant liable, issues of damages as well. Since Defendant was required to address damages or lose the opportunity to do so, none of the evidence or discussion relating to damages presented on Defendant's behalf should be taken or construed by the jury as an admission by Defendant that it is liable to Plaintiff. Defendant has denied Plaintiff's charges as vigorously as Plaintiff has presented his claims.

In this case, if you find for Defendant, you will not be concerned with the question of damages. But if you find in favor of Plaintiff, you will of course be concerned with the question of damages. It is my duty to instruct you as to the proper measure of damages to be applied in that circumstance.

Instruction Does Not Indicate Entitlement

If Plaintiff has proven any of his claims against the Defendant by a preponderance of the evidence, you must determine the damages, if any, to which Plaintiff is entitled. You should not interpret the fact that I have given instructions about damages as an indication in any way that I believe Plaintiff should or should not win this case. It is your task to first decide whether Defendant is liable on the claim presented. I am instructing you on damages only so that you will have

guidance in the event you decide Defendant is liable and that Plaintiff is entitled to recover money from Defendant.

Title VII, Section 1981, and THRA Damages

If you find that Defendant Hilton violated Title VII, Section 1981, or the THRA and discriminated against Plaintiff and/or retaliated against him, then you must award Plaintiff the actual damages that he has sustained as a result of the discriminatory actions of Defendant. The damages you may award are:

Back pay and the present value of any lost employment benefits. Back pay is the sum of wages Plaintiff would have earned from the date of Defendant's adverse employment actions through today's date, less any money earned or which reasonably could have been earned.

Remember, throughout your deliberations, you must not engage in speculation, guesswork, or conjecture, and you must not award damages under this instruction by way of punishment or through sympathy. The purpose of a back pay award is to restore the employee to the status quo he would have enjoyed if the discriminatory and/or retaliatory actions had not taken place. Back pay, therefore, is limited to actual damages.

## Mitigation

Plaintiff must make every reasonable effort to minimize or reduce his damages for loss of compensation by seeking employment. This is called mitigation of damages.

If you determine that Mr. Kumar is entitled to damages, you must reduce these damages by 1) what Mr. Kumar earned or 2) what Mr. Kumar could have earned by reasonable effort during the period from his discharge until the date of trial.

You must decide whether Plaintiff was reasonable in not seeking or accepting a particular job during this timeframe. However, Plaintiff must accept employment that is “of a like nature.” In determining whether employment is “of a like nature,” you may consider:

1. The type of work;
2. The hours worked;
3. The compensation;
4. The job security;
5. The working conditions; and
6. Other conditions of employment.

Defendant must prove that Plaintiff failed to mitigate his damages for loss of compensation.

If you determine that Plaintiff did not make reasonable efforts to obtain another similar job, you must decide whether any damages resulted from his failure to do so. In calculating back pay, you must not compensate Plaintiff for any portion of his damages that resulted from his failure to make reasonable efforts to reduce his damages.

Plaintiff's diligence must be evaluated in light of the individual characteristics of the claimant and the job market.

A claimant is only required to make reasonable efforts to mitigate his damages, and is not held to the highest standard of diligence.

#### Front Pay Under Title VII, Section 1981, and THRA

If Plaintiff persuades you that Defendant violated Title VII, Section 1981, or the THRA by discriminating or retaliating against Plaintiff, Plaintiff may be entitled to prospective damages, sometimes called front pay. In the event your award is for Plaintiff, you must not consider damages for front pay; the Court will

calculate front pay. Therefore, any award you make should not consider front pay, as this amount is for the Court to decide, if applicable.

#### Attorney Fees

If you find for Plaintiff, you should also not be concerned with attorney fees. This is a matter for the Court.

#### Compensatory Damages under Title VII, Section 1981, and THRA

If you find that Defendant discriminated or retaliated against Plaintiff, then you must determine an amount that is fair compensation for him

These damages are called compensatory damages. The purpose of compensatory damages is to make Mr. Kumar whole—that is to compensate him for the damages he has suffered—other than back pay. Compensatory damages can include medical expenses Mr. Kumar may have incurred because of any adverse employment action taken against him by Defendant. In addition, compensatory damages can include compensation for pain and suffering, mental anguish, shock, embarrassment, humiliation, discomfort, and inconvenience that he proves he has suffered because of the conduct of Defendant.

You may award compensatory damages only for injuries Mr. Kumar proves were proximately caused by Defendant's wrongful conduct. The damages that you award must be fair compensation for all of Mr. Kumar's damages, no more and no less.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require Mr. Kumar to prove the amount of losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. In particular, in regard to pain and suffering and mental and emotional distress, you may award damages to Mr. Kumar for any alleged humiliation, emotional distress, mental anguish, and suffering that he experienced as a result of Defendant's adverse actions.

No evidence of monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award you make must be fair in light of the evidence presented at trial.

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of Plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

Finally, ladies and gentlemen, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

**[READ VERDICT FORM]**

You will be selecting a foreperson after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your foreperson will fill in and sign the verdict form.

Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree to that verdict. That is, your verdict must be unanimous.

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

We will be sending with you to the jury room all of the exhibits in the case. You may have not seen all of these previously and they will be there for your review and consideration. You may take a break before you begin the case. However, you may not deliberate at any time unless all eight of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your

recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

You will take the verdict form to the jury room and when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreperson, and pass the note to the clerk who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify the vote of the jury at the time.