IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THE GIL RAMIREZ GROUP, L.L.C. and GIL RAMIREZ, JR.,	§	
Plaintiffs,	§	
vs.	§	CIVIL ACTION 4:10-CV-04872
HOUSTON INDEPENDENT SCHOOL DISTRICT, LAWRENCE MARSHALL, EVA JACKSON and RHJ-JOC, INC.,	§	JURY REQUESTED
Defendants.	§	

JURY CHARGE

Instruction No. 1

GENERAL INSTRUCTIONS

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict. You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

Instruction No. 2

INSTRUCTIONS ON PARTIES AND OTHER DEFINED TERMS

For the purposes of this Jury Charge, the following terms shall have the meanings given:

(a) "**Plaintiff**" means Plaintiff The Gil Ramirez Group, LLC.

(b) "**Defendants**" means, collectively, Defendants Lawrence Marshall, Marshall and Associates, David "Pete" Medford, Fort Bend Mechanical, Ltd., FBM Management, LLC, Eva Jackson, RHJ-JOC, Inc., Joyce Moss Clay, and JM Clay and Associates.

(c) **"Marshall Defendants**" means, collectively, Defendants Lawrence Marshall and Marshall and Associates (a dba owned by Defendant Lawrence Marshall).

(d) **"Clay Defendants"** means, collectively, Defendants Joyce Moss Clay and JM **"Medford** Clay and Associates (a dba owned by Defendant Joyce Moss Clay).

(e) **Defendants"** means, collectively, David "Pete" Medford, Fort Bend Mechanical, Ltd., and FBM Management, LLC.

(f) **"Jackson Defendants"** means, collectively, Eva Jackson and RHJ-JOC, Inc.

Instruction No. 3

BURDEN OF PROOF

Plaintiff, Gil Ramirez Group, LLC, has the burden of proving its case by a preponderance of the evidence. To prove by a preponderance of the evidence means to prove something is more likely so than not so. If you find that Plaintiff has failed to prove any element of a claim by a preponderance of the evidence, then it may not recover on that claim.

Instruction No. 4

NO INFERENCE FROM FILING SUIT

The fact that a person brought a lawsuit and is in court seeking damages creates no inference that the person is entitled to a judgment. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

PROPOSED INSTRUCTION NO. 5

EVIDENCE

The evidence you are to consider is the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts that have been proven.

An "inference" is not speculation. Rather, an inference is a conclusion that logically and reasonably follows from the proven facts.

Certain testimony has been presented to you through depositions. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. Under some circumstances, a witness's testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers have been read to you during this trial. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility in the same way as if the witness had been present and had testified from the witness stand in court.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

A typewritten transcript of an oral conversation, which can be heard on a recording received in evidence, was shown to you. Unlike the contents of deposition transcripts, neither this audio recording nor the transcript is sworn testimony, and you may consider that fact in determining the credibility of the statements the recording and the transcript contain.

Instruction No. 6

WITNESSES

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, his or her testimony may be accepted if it is not contradicted by direct evidence or by any fair inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

Instruction No. 7

EXPERT WITNESSES

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

Instruction No. 8

CHARTS AND SUMMARIES

Certain charts and summaries have been shown to you solely to help explain or summarize the facts disclosed by the documents that are in evidence. These charts and summaries are not themselves evidence or proof of any facts. You should determine the facts from the evidence.

Instruction No. 9

IMPEACHMENT BY WITNESS'S INCONSISTENT STATEMENTS

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of the misstatement may depend on whether it has to do with an important fact or with only an unimportant detail.

Instruction No. 10

INVOCATION OF FIFTH AMENDMENT

During this case, witness Ricardo Aguirre refused to answer certain questions by exercising his privilege against self-incrimination. With respect to his refusal to testify, you may, but are not required to, infer that his testimony would have been unfavorable to the Defendants.

During this case, witness Frankie Wong refused to answer certain questions by exercising his privilege against self-incrimination. With respect to his refusal to testify, you may, but are not required to, infer that his testimony would have been unfavorable to Defendant Marshall.

Instruction No. 11

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACT

Plaintiff has brought a claim alleging that Defendants tortiously interfered with Plaintiff's prospective contract or business relationship with Houston Independent School District, in violation of Texas state law.

To find the Defendants liable, you must find: (1) a reasonable probability that the Plaintiff would have entered into a business relationship with a third party, (2) the Defendants either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct, (3) the Defendants' conduct was independently tortious or unlawful, and in the case of Marshall, that he engaged in an official act that was independently tortious or unlawful (4) the interference proximately caused the Plaintiff injury, and (5) the Plaintiff suffered actual damage or loss as a result.

Where a contract or business relationship is delayed but eventually arises, there can be no claim for tortious interference with prospective contracts or business relationships.

Interference as contemplated by this cause is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result. However, if the actor had no desire to effectuate the interference by his conduct but knew that interference would be a mere incidental result, then the interference may not be improper.

With respect to the third element, Plaintiff must prove, by a preponderance of the evidence, that the Defendants' conduct was "independently tortious or unlawful" – that is, that the conduct was unlawful in and of itself. Conduct that is merely "unfair" is not actionable and cannot be the basis for an action for tortious interference with prospective contract. Moreover,

the mere fact that FBM and RHJ were competing with GRG for JOC awards is not tortious in and of itself.

According to the Supreme Court, an official act is a decision or action on a question, matter, cause, suit, proceeding or controversy. The question, matter, cause, suit, proceeding or controversy must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something specific and focused that is pending or may by law be brought before a public official. To qualify as an official act, the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so. That decision or action may include using his official position to exert pressure on another official to perform an official act, or to advise another official, knowing or intending that such advice will form the basis for an "official act" by another official. A public official is not required to actually make a decision or take an action on a question, matter, cause, suit, proceeding or controversy; it is enough that the official agree to do so. The agreement need not be explicit, and the public official need not specify the means that he will use to perform his end of the bargain. Nor must the public official in fact intend to perform the "official act," so long as he agrees to do so. Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit that definition of "official act."

With respect to the fourth element, "proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom.

To prevail on this element of its claim, Plaintiff must prove that the alleged tortious conduct was a substantial factor in bringing about the harm at issue, and, absent the alleged

conduct ("but for" the act), the harm would not have occurred. Thus, if you find that Plaintiff would have experienced the same drop off in work or would not have been selected as a contractor or awarded a contract for the 2010 JOC procurement regardless of the actions of the Defendants, you must find against Plaintiff on this issue.

Question No. 11.1

TORTIOUS INTERFERENCE WITH A PROSPECTIVE BUSINESS RELATIONSHIP

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, knowingly or intentionally interfered with Plaintiff's prospective business relations with the Houston Independent School District?

	Answer "Yes" or "No."
Marshall Defendants	yes
Clay Defendants	yes
Medford Defendants	yes
Jackson Defendants	yes

Instruction No. 12

CIVIL CONSPIRACY

Plaintiff also claims that Defendants are liable for engaging in a civil conspiracy in violation of Texas state law. A civil conspiracy is "a combination by two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means."

To find the Defendants liable for a civil conspiracy, you must find (1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts committed in furtherance of the conspiracy; and (5) damages as a proximate result.

To be liable for conspiracy, a party must be shown to have intended to do more than engage in the conduct that resulted in the injury. It must be shown that from the inception of the combination or agreement the party intended to cause the injury or was aware of the harm likely to result from the wrongful conduct. Thus, a party must be shown to have known the object and purpose of the conspiracy and to have had a meeting of the minds with the other conspirators to accomplish that object and purpose, intending to bring about the resulting injury.

A defendant's liability for conspiracy is based on participation in the statutory violation or underlying tort that would have been actionable against at least one of the conspirators individually. Any tortious or unlawful act must be committed in furtherance of the conspiracy – that is, in pursuit of the object of the conspiracy to which all participants have agreed. An act or declaration by a conspirator not in pursuance of the common objective is not actionable against coconspirators. Likewise, an improper motive in performing a lawful action will not support liability for conspiracy. The injury must have been caused by the tort or statutory violation that the conspirator agreed with the perpetrator to bring about while intending the resulting harm. Once a civil conspiracy is found, each coconspirator is responsible for the actions of any

coconspirator in furtherance of the conspiracy. Thus, each element of the underlying tort or violation is imputed to each participant.

The damages recoverable in an action for civil conspiracy are those damages resulting from the commission of the wrong, not the conspiratorial agreement. An affirmative finding on an underlying cause of action that includes a finding sufficient to impose exemplary damages may be imputed to all participants in the conspiracy on an affirmative conspiracy finding.

Question No. 12.1

CIVIL CONSPIRACY

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, were engaged in an unlawful conspiracy that damaged Plaintiff Gil Ramirez Group?

	Answer "Yes" or "No."
Marshall Defendants	yes
Clay Defendants	yes
Medford Defendants	yes
Jackson Defendants	yes

Instruction No. 13

COMPENSATORY DAMAGES

If you find that any of the Defendants are liable to Plaintiffs, then you must determine an amount that is fair compensation for all of Plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make Plaintiff whole—that is, to compensate Plaintiffs for the damage that ~~they~~ he has suffered. Compensatory damages are not limited to expenses that Plaintiffs may have incurred because of ~~their~~ its injury.

You may award compensatory damages only for injuries that Plaintiff proves were proximately caused by a Defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of Plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize Defendants. You should not award compensatory damages for speculative injuries, but only for those injuries that Plaintiff has actually suffered or that Plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Plaintiff must prove, by a preponderance of the evidence, a specific amount of damages that can be ascertained by objective facts, figures, or data. 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 that Plaintiff prove the amount of its losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You should not interpret the fact that I am giving instructions about damages as any indication that I believe that Plaintiff should or should not prevail on these claims. I am instructing you on damages only so that you will have guidance in the event you decide that any defendant is liable and that Plaintiff is entitled to recover money from any defendant.

If your answer to Questions 11.1 or 12.1 was "Yes" as to any Defendant, then answer the following question. Otherwise do not answer the following question.

Question No. 13.1

TORTIOUS INTERFERENCE DAMAGES

Do you find, by a preponderance of the evidence, that Plaintiff suffered actual damage or loss from any of the Defendants' knowing or intentional interference with Plaintiff's prospective business relations with the Houston Independent School District?

Answer "Yes" or "No."

YES

If your answer is "Yes," go to the next question.

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for their damages, if any, proximately caused by Defendants' interference?

You are instructed that, in determining the amount of damages, if any, to be awarded for the interference with Plaintiffs' prospective business relations, you may consider the following elements of damages:

☐ profits that Plaintiffs lost as a natural, probable, and foreseeable consequence of the interference with the business relation

Do not add any amount for interest on the damages. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of the instructions regarding, or your answers to, any other questions about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

2009 Loss of Profits: $ 290,667.00

2010 Loss of Profits: $ 386,000.00

2011 Loss of Profits: $ 0

2012 Loss of Profits: $ 0

If your answer to Questions 11.1 was "Yes" as to any Defendant and your answer to Question 12.1 was "No" as to all Defendants, then answer the following question. Otherwise do not answer the following question.

Question No. 13.2

PROPORTIONATE RESPONSIBILITY

Assign percentages of responsibility only to those defendants you found liable for tortious interference with prospective contract or conspiracy to commit tortious interference with prospective contract. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to anyone is not necessarily measured by the number of acts or omissions found.

For each person you found liable for tortious interference with prospective contract or conspiracy to commit tortious interference with prospective contract, indicate the percentage of responsibility attributable to each:

Marshall Defendants	30 %
Clay Defendants	20 %
Medford Defendants	25 %
Jackson Defendants	25 %

Instruction No. 14

EXEMPLARY/PUNITIVE DAMAGES

If you find that Defendants are liable for tortious interference with a prospective business relationship, you may award punitive damages if you find that Defendants acted with malice or with reckless indifference to the rights of others. One acts with malice when one purposefully or knowingly violates another's rights or safety. One acts with reckless indifference to the rights of others when one's conduct, under the circumstances, manifests a complete lack of concern for the rights or safety of another. Plaintiff has the burden of proving that punitive damages should be awarded by clear and convincing evidence.

The purpose of punitive damages is to punish and deter, not to compensate. Punitive damages serve to punish a defendant for malicious or reckless conduct and, by doing so, to deter others from engaging in similar conduct in the future. You are not required to award punitive damages. If you do decide to award punitive damages, you must use sound reason in setting the amount. Your award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. It should be presumed that Plaintiff has been made whole by compensatory damages, so punitive damages should be awarded only if Defendants' misconduct is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

If you decide to award punitive damages, the following factors should guide you in fixing the proper amount:

1. the reprehensibility of Defendants' conduct, including but not limited to whether there was deceit, cover-up, insult, intended or reckless injury, and whether Defendants conduct was motivated by a desire to augment profit;
2. the ratio between the punitive damages you are considering awarding and the amount of harm that was suffered by the victim or with which the victim was threatened;
3. the possible criminal and civil sanctions for comparable conduct.

You may impose punitive damages against one or more of Defendants and not others. You may also award different amounts against Defendants.

If your answer to Question 11.1 was "Yes" as to any Defendant, then answer the following question. Otherwise do not answer the following question.

Question 14.1

EXEMPLARY DAMAGES

Which of the Defendants below, if any, do you find by clear and convincing evidence caused harm to the Plaintiff through malice or reckless indifference to the rights of others?

	Answer "Yes" or "No."
Marshall Defendants	yes
Clay Defendants	yes
Medford Defendants	yes
Jackson Defendants	yes

If your answer to Question 14.1 was "Yes" as to any Defendant, then answer the following question. Otherwise do not answer the following question.

Question No. 14.2

EXEMPLARY DAMAGES

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to Gil Ramirez Group, LLC as exemplary damages, if any, for the conduct found in response to Question No. 11.1?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Answer in dollars and cents:

Marshall Defendants	$ 1,400,000.00
Clay Defendants	$ 500,000.00
Medford Defendants	$ 500,000.00
Jackson Defendants	$ 1,000,000.00

Instruction No. 15

PROPOSED INSTRUCTION NO. 10 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C), CONDUCT THE AFFAIRS OF THE ENTERPRISE (MEDFORD/CLAY/MARSHALL ENTERPRISE)

Plaintiff asserts a claim against the Marshall, Clay, and Medford Defendants for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. GRG specifically claims that the Marshall, Clay, and Medford Defendants violated § 1962(c) of RICO. The alleged harms to Plaintiff that can be considered for this claim are limited to the time period between August 2009 and May 2010.

To succeed on this claim, GRG must prove each of the following five facts by a preponderance of the evidence: First, you must find the existence of an enterprise. Second, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce. Third, you must find that the Marshall, Clay, and Medford Defendants (or any two of those Defendants) were employed by or associated with the alleged enterprise. Fourth, you must find that the Marshall, Clay, and Medford Defendants (or any two of those) participated, either directly or indirectly, in the conduct of the affairs of the enterprise. And fifth, you must find that the Marshall, Clay, and Medford Defendants (or any two of those) participated through a pattern of racketeering activity.

Now I'll provide you with some additional instructions to apply as you consider the facts that GRG must prove.

First, GRG must prove the existence of an enterprise. An "enterprise" doesn't have to be a legal entity. It can be an association of persons or entities (an "association-in-fact enterprise"). In this question, the enterprise is alleged to be an association between the Medford, Clay, and Marshall (or any two of those) Defendants.

The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated with the enterprise, and a duration sufficient to permit those associates to pursue the enterprise's purpose. The criminal enterprise must have an existence separate and apart from the pattern of activity in which it engages. In other words, the criminal enterprise must not simply be created by the alleged racketeering activity itself.

Second, GRG must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. Plaintiff must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. "Engage in or have an effect on interstate or foreign commerce" means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

Third, GRG must prove that the Marshall, Clay, and Medford (or any two of those) Defendants were employed by or associated with the alleged enterprise. The requirement that the above-named Defendants be "employed by or associated with" the enterprise means they must have some minimal association with the alleged enterprise. They must know something about the alleged enterprise's activities as they relate to the racketeering activities.

Fourth, GRG must also prove by a preponderance of the evidence that the Marshall, Clay, and Medford (or any two of those) Defendants knowingly and willfully participated, directly or indirectly, in the conduct of the affairs of the enterprise. To prove this, GRG must show that they actively conducted or participated in conducting the affairs of the alleged enterprise through a pattern of racketeering activity. Each Defendant doesn't need to participate in, or be aware of, all of the enterprise's activities. It's sufficient if they conducted or participated in the conduct of some of the enterprise's activities through a pattern of racketeering activity.

Fifth, GRG must prove that the Marshall, Clay, and Medford (or any two of those) Defendants knowingly and willfully participated in the conduct of the enterprise's affairs through

a pattern of racketeering activity. "Racketeering activity" in this case is an act that violates one of the State Law Bribery or State Law Bribery (political contributions) statues. The law about these statutes is discussed below.

Should you find, by a preponderance of the evidence, that Plaintiff suffered an injury to its business or property, you must then determine whether the Defendants' conduct was a "proximate cause" of the Plaintiff's injury. For purposes of the definition of "proximate cause," a defendant cannot be held liable for unforeseeable risks and injuries which have no direct relation between the defendant's conduct and the plaintiff's alleged injuries. Furthermore, the presence of intervening factors – such as the actions of a third party – breaks the causal chain between the defendant's alleged acts and the plaintiff's alleged injury and precludes a proximate cause finding.

Therefore, when you are deciding whether any defendant proximately caused injury to Plaintiff, you must determine whether there is a direct relationship between the defendant's conduct and the Gil Ramirez Group, LLC's alleged injuries. Should you find that some unforeseen intervening cause, such as the actions of a third party, breaks the relationship between conduct and action, you cannot find proximate cause.

Racketeering Activity

An act of "racketeering activity" is also called a "predicate act." A "pattern of racketeering activity" means that the Marshall, Clay, and Medford Defendants (or any two of those) Defendants committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts doesn't establish a pattern under RICO. To prove a pattern of predicate acts, GRG must show that the acts were related to one another and to the enterprise. Two or more acts of racketeering activity that aren't related don't establish a pattern of racketeering activity under RICO. Predicate acts are "related" to one

another if they have the same or similar purposes, results, participants, victims, or methods. Predicate acts are also related if they have common distinguishing characteristics and aren't isolated events. To be related, the predicate acts don't have to be the same kind of acts. For example, the acts may comprise one act of bribery and one act of money laundering.

To make up a pattern of racketeering activity, predicate acts must demonstrate continuity. Continuity can be demonstrated in two basic ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that doesn't occur over a substantial period of time but, by its nature, is likely to be repeated into the future.

"Racketeering activity" means an act that violates the statutes described below. But you can't consider just any racketeering act the Marshall, Clay, or Medford (or any two of those) Defendants allegedly committed in violation of one of these statutes as bearing on whether they have committed two or more predicate acts as a pattern of racketeering activity. To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts GRG alleges against the Marshall, Clay, or Medford (or any two of those) Defendants. And you can't find that they engaged in a "pattern of racketeering activity" unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

So it's insufficient if you don't all agree to the finding of what two or more predicate acts the Marshall, Clay, and Medford (or any two of those) Defendants committed. Some of you can't find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can't find that the Marshall, Clay, and Medford (or any two of those) Defendants engaged in a pattern of racketeering activity unless you find (1) a "pattern" of predicate acts, and (2) that GRG has proved by a preponderance of the evidence that each liable Defendant committed each of the two or more predicate acts that you find make up that pattern.

A person doesn't violate RICO just by associating with or being employed by an otherwise lawful enterprise if others conduct the enterprise's affairs through a pattern of racketeering activity in which the person isn't personally engaged.

If you find that the Marshall, Clay, and Medford (or any two of those) Defendants, or any two of those Defendants, violated § 1962(c), you must decide whether that violation caused an injury to GRG. The damages that GRG may recover are those caused by the predicate acts constituting the pattern of racketeering activity if they injure GRG or its business or property. It isn't necessary that every predicate act caused damage to GRG. But GRG can only recover damages caused by predicate acts that are part of the pattern of racketeering activity.

Predicate Acts:

State Law Bribery - Texas Penal Code § 36.02(a)(1)

Texas Penal Code Section 36.02(a)(1) makes it a crime for anyone to confer or accept any benefit in exchange for the exercise of discretion of the recipient as a public official. For you to find the defendant committed this predicate act you must find, by a preponderance of the evidence, the following:

First, the Defendant intentionally or knowingly offered another or conferred on another or agreed to confer on another or solicited from another or accepted from another or agreed to accept from another any benefit as consideration for the recipient's decision or opinion or recommendation or vote or other exercise of discretion such as the exertion of pressure on colleagues as a public servant,

and **Second,** the benefit was other than a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

"Public servant" means a person elected even if the person had not yet qualified for office or assumed his duties, who was an officer or employee or agent of government; or a candidate for nomination or election to public office.

State Law Bribery (Political Contribution) - Texas Penal Code § 36.02(a)(4)

Texas Penal Code Section 36.02(a)(4) also makes it a crime for anyone to confer or accept political contributions in exchange for a specific exercise of official discretion of the recipient as a public official. For you to find the defendant committed this predicate act you must find, by a preponderance of the evidence, the following:

First, the Defendant intentionally or knowingly offered another or conferred on another or agreed to conferr on another or solicited from another or accepted from another or agreed to accept from another any benefit that is a political contribution as defined by Title 15, Election Code or that is an expenditure made and reported in accordance with Chapter 305, Government Code,

Second, the benefit was offered or conferred or solicited or accepted or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

"Public servant" means a person elected, even if the person had not yet qualified for office or assumed his duties, who was an officer or employee or agent of government; or a candidate for nomination or election to public office.

Questions No. 15.1

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C)
(MEDFORD/CLAY/MARSHALL ENTERPRISE)

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, participated in the alleged Medford/Clay/Marshall criminal association-in-fact enterprise and engaged in a pattern of racketeering in violation of 18 U.S.C. § 1962(C) that injured GRG?

Answer "Yes" or "No."

Marshall Defendants	yes
Clay Defendants	yes
Medford Defendants	yes

Instruction No. 16

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(D), CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE (MEDFORD/CLAY/MARSHALL ENTERPRISE)

Plaintiff GRG has brought a claim against the Marshall, Clay, and Medford Defendants for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. GRG specifically claims that the Marshall, Clay, and Medford Defendants violated RICO § 1962(d) by conspiring to violate RICO § 1962(c). I've already given you instructions on the elements of a violation of § 1962(c). Now you must decide if Plaintiff has proved by a preponderance of the evidence whether two or more of the defendants engaged in a conspiracy to violate RICO § 1962(c).

Generally, a RICO "conspiracy" is an agreement by two or more people to commit an unlawful act. Put another way, it's a kind of partnership for illegal purposes. Every member of the conspiracy becomes the agent or partner of every other member. GRG doesn't have to prove that all the people named in the complaint were members of the conspiracy—or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself. And GRG doesn't have to prove that the conspirators were successful in carrying out the plan.

To prove a RICO conspiracy, GRG must prove each of the following three facts by a preponderance of evidence:

First, you must find that two or more people agreed to try to accomplish an unlawful plan to engage in a pattern of racketeering activity.

And second, you must find that a defendant agreed to the overall objective of the conspiracy. Or, as an alternative to the second element, you must find that a defendant agreed with at least one other defendant to commit two predicate acts as part of the conspiracy.

GRG may show an "agreement to the overall objective of the conspiracy" by circumstantial evidence that a defendant must have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. If GRG proves agreement on an overall objective, then it isn't necessary that a defendant agree to personally commit two predicate acts.

A defendant can also engage in a RICO conspiracy even if Defendants didn't agree to the conspiracy's overall objective. It's enough that Defendants engaged in a part of the conspiracy with at least one other defendant by committing at least two predicate acts—alone or with someone else.

While the essence of a RICO conspiracy is an agreement to further an endeavor that, if completed, would satisfy all the elements of a substantive RICO violation, GRG doesn't have to offer direct evidence of an agreement. The conspiracy's existence can be inferred from the participants' conduct. But a defendant must objectively manifest, through words or actions, Defendants' agreement to participate in the enterprise's affairs.

GRG doesn't have to show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated the details of the scheme, its object, or purpose, or the precise means by which the object or purpose was to be accomplished. Plaintiff also doesn't have to establish that all the means or methods alleged to carry out the alleged conspiracy were, in fact, agreed on, or that all the means or methods that were agreed on were actually used or put into operation. And Plaintiff doesn't have to prove that all persons alleged to be conspiracy members were actually members or that alleged conspirators succeeded in accomplishing their unlawful objectives.

But it isn't enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering Plaintiff alleges, without more, or that they agreed to participate in the affairs of the same alleged enterprise. It doesn't matter that the alleged conspirators

participated in the conduct of the affairs of the alleged enterprise through different or dissimilar acts of racketeering activity so long as the alleged racketeering acts would—if actually committed—create a "pattern of racketeering activity" as I've defined it.

A defendant can become a member of a conspiracy without knowing all the unlawful scheme's details or without knowing the names and identities of all the other alleged conspirators. If Plaintiff proves by a preponderance of the evidence that a particular defendant has knowingly joined the alleged conspiracy, it doesn't matter that Defendants may not have participated in the alleged conspiracy or scheme's earlier stages.

Mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, doesn't necessarily prove the existence of a conspiracy. A person who doesn't have knowledge of a conspiracy, but who happens to act in a way that advances some object or purpose of conspiracy, doesn't become a conspirator.

GRG doesn't have to prove that a defendant actually committed any of the acts that Defendants may have agreed to commit to establish their membership in the conspiracy. To determine whether there was a conspiracy, you must consider all the evidence in the case. If you find that there was a conspiracy, then you can attribute the statements or acts of the co-conspirators to Defendants. If you find that there was not a conspiracy, then you can't attribute the statements or acts of co-conspirators to Defendants. If you find the conspiracy didn't exist, then you must find for Defendants. But if you're satisfied that the conspiracy existed, you must determine who the members of the conspiracy were.

If you find that a particular defendant is a member of another conspiracy, but not the one Plaintiff charged, then you can't find that defendant liable in this case. Put another way, you can't

find that a defendant violated § 1962(d) unless you find that the defendant was a member of the conspiracy charged— not some other separate conspiracy.

If you decide that a defendant conspired to violate RICO, you must decide whether that conspiracy caused GRG injury. The damages GRG may recover are those caused by the predicate acts committed by members of the conspiracy that injured GRG in its business or property.

If you conclude that a defendant joined in a conspiracy to violate RICO, that Defendant is responsible for all damages caused by predicate acts committed by members of the conspiracy that caused injury to GRG. It isn't necessary that every predicate act caused damage to GRG, but GRG can only recover for damages caused by a predicate act committed by a conspiracy member.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy existed as alleged, you should next determine whether each defendant under consideration willfully became a member of that conspiracy.

Question No. 16.1

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(D), CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE (MEDFORD/CLAY/MARSHALL ENTERPRISE)

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, knowingly and willfully agreed to participate in a conspiracy to form the Medford/Clay/Marshall criminal association-in-fact enterprise and violate 18 U.S.C. § 1962(C) and therefore injured GRG?

Answer "Yes" or "No."

Marshall Defendants	yes
Clay Defendants	yes
Medford Defendants	yes

If your answer to Question 15.1 or 16.1 was "Yes" as to any Defendant, then answer the following question, otherwise do not answer the following question.

Question No. 16.2

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C), DAMAGES (MEDFORD/CLAY/MARSHALL ENTERPRISE)

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for its damages, if any, proximately caused by the Marshall, Clay, and/or Medford Defendants' racketeering activity?

2009 Loss of Profits: $ 290,677.00

January –May 2010 Loss of Profits: $ 166,833.00

Instruction No. 17

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C), CONDUCT THE AFFAIRS OF THE ENTERPRISE (JACKSON/CLAY/MARSHALL ENTERPRISE)

Plaintiff asserts a claim against the Marshall, Clay, and Jackson Defendants allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. GRG specifically claims that the Marshall, Clay, and Jackson Defendants violated § 1962(c) of RICO. The alleged harms to Plaintiff that can be considered for this claim are limited to the time period between August 2009 and May 2010.

To succeed on this claim, GRG must prove each of the following five facts by a preponderance of the evidence: First, you must find the existence of an enterprise. Second, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce. Third, you must find that the Marshall, Clay, and Jackson Defendants (or any two of those Defendants) were employed by or associated with the alleged enterprise. Fourth, you must find that the Marshall, Clay, and Jackson Defendants (or any two of those) participated, either directly or indirectly, in the conduct of the affairs of the enterprise. And fifth, you must find that the Marshall, Clay, and Jackson Defendants (or any two of those) participated through a pattern of racketeering activity.

Now I'll provide you with some additional instructions to apply as you consider the facts that GRG must prove.

First, GRG must prove the existence of an enterprise. An "enterprise" doesn't have to be a legal entity. It can be an association of persons or entities (an "association-in-fact enterprise"). In this question, the enterprise is alleged to be an association between the Jackson, Clay, and Marshall (or any two of those) Defendants.

The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated with the enterprise,

and a duration sufficient to permit those associates to pursue the enterprise's purpose. The criminal enterprise must have an existence separate and apart from the pattern of activity in which it engages. In other words, the criminal enterprise must not simply be created by the alleged racketeering activity itself.

Second, GRG must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. Plaintiff must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. "Engage in or have an effect on interstate or foreign commerce" means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

Third, GRG must prove that the Marshall, Clay, and Jackson (or any two of those) Defendants were employed by or associated with the alleged enterprise. The requirement that the above-named Defendants be "employed by or associated with" the enterprise means they must have some minimal association with the alleged enterprise. They must know something about the alleged enterprise's activities as they relate to the racketeering activities.

Fourth, GRG must also prove by a preponderance of the evidence that the Marshall, Clay, and Jackson (or any two of those) Defendants "participated, directly or indirectly, in the conduct of the affairs of the enterprise." To prove this, GRG must show that they actively conducted or participated in conducting the affairs of the alleged enterprise through a pattern of racketeering activity. Each Defendant doesn't need to participate in, or be aware of, all of the enterprise's activities. It's sufficient if they conducted or participated in the conduct of some of the enterprise's activities through a pattern of racketeering activity.

Fifth, GRG must prove that the Marshall, Clay, and Jackson (or any two of those) Defendants participated in the conduct of the enterprise's affairs through a pattern of racketeering activity. "Racketeering activity" in this case is an act that violates one of the State

Law Bribery or State Law Bribery (political contributions) statues. The law about these statutes is discussed below.

Should you find, by a preponderance of the evidence, that Plaintiff suffered an injury to its business or property, you must then determine whether the Defendants' conduct was a "proximate cause" of the Plaintiff's injury. For purposes of the definition of "proximate cause," a defendant cannot be held liable for unforeseeable risks and injuries which have no direct relation between the defendant's conduct and the plaintiff's alleged injuries. Furthermore, the presence of intervening factors – such as the actions of a third party – breaks the causal chain between the defendant's alleged acts and the plaintiff's alleged injury and precludes a proximate cause finding.

Therefore, when you are deciding whether any defendant proximately caused injury to Plaintiff, you must determine whether there is a direct relationship between the defendant's conduct and the Gil Ramirez Group, LLC's alleged injuries. Should you find that some unforeseen intervening cause, such as the actions of a third party, breaks the relationship between conduct and action, you cannot find proximate cause.

Racketeering Activity

An act of "racketeering activity" is also called a "predicate act." A "pattern of racketeering activity" means that the Marshall, Clay, and Jackson Defendants (or any two of those) Defendants committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts doesn't establish a pattern under RICO. To prove a pattern of predicate acts, GRG must show that the acts were related to one another and to the enterprise. Two or more acts of racketeering activity that aren't related don't establish a pattern of racketeering activity under RICO. Predicate acts are "related" to one another if they have the same or similar purposes, results, participants, victims, or methods.

Predicate acts are also related if they have common distinguishing characteristics and aren't isolated events. To be related, the predicate acts don't have to be the same kind of acts. For example, the acts may comprise one act of bribery and one act of money laundering.

To make up a pattern of racketeering activity, predicate acts must demonstrate continuity. Continuity can be demonstrated in two basic ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that doesn't occur over a substantial period of time but, by its nature, is likely to be repeated into the future.

Again, "racketeering activity" means an act that violates the above-described statutes. But you can't consider just any racketeering act the Marshall, Clay, or Jackson (or any two of those) Defendants allegedly committed in violation of one of these statutes as bearing on whether they have committed two or more predicate acts as a pattern of racketeering activity. To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts GRG alleges against the Marshall, Clay, or Jackson (or any two of those) Defendants. And you can't find that they engaged in a "pattern of racketeering activity" unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

So it's insufficient if you don't all agree to the finding of what two or more predicate acts the Marshall, Clay, and Jackson (or any two of those) Defendants committed. Some of you can't find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can't find that the Marshall, Clay, and Jackson (or any two of those) Defendants engaged in a pattern of racketeering activity unless you find (1) a "pattern" of predicate acts, and (2) that GRG has proved by a preponderance of the evidence that each liable Defendant committed each of the two or more predicate acts that you find make up that pattern.

A person doesn't violate RICO just by associating with or being employed by an otherwise lawful enterprise if others conduct the enterprise's affairs through a pattern of racketeering activity in which the person isn't personally engaged.

If you find that the Marshall, Clay, and Jackson (or any two of those) Defendants, or any two of those Defendants, violated § 1962(c), you must decide whether that violation caused an injury to GRG. The damages that GRG may recover are those caused by the predicate acts constituting the pattern of racketeering activity if they injure GRG or its business or property. It isn't necessary that every predicate act caused damage to GRG. But GRG can only recover damages caused by predicate acts that are part of the pattern of racketeering activity

Predicate Acts:

State Law Bribery - Texas Penal Code § 36.02(a)(1)

Texas Penal Code Section 36.02(a)(1) makes it a crime for anyone to confer or accept any benefit in exchange for the exercise of discretion of the recipient as a public official. For you to find the defendant committed this predicate act you must find, by a preponderance of the evidence, the following:

First, the Defendant intentionally or knowingly offered another or conferred on another or agreed to confer on another or solicited from another or accepted from another or agreed to accept from another any benefit as consideration for the recipient's decision or opinion or recommendation or vote or other exercise of discretion such as the exertion of pressure on colleagues as a public servant,

and **Second,** the benefit was other than a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

"Public servant" means a person elected even if the person had not yet qualified for office or assumed his duties, who was an officer or employee or agent of government; or a candidate for nomination or election to public office.

State Law Bribery (Political Contribution) - Texas Penal Code § 36.02(a)(4)

Texas Penal Code Section 36.02(a)(4) also makes it a crime for anyone to confer or accept political contributions in exchange for a specific exercise of official discretion of the recipient as a public official. For you to find the defendant committed this predicate act you must find, by a preponderance of the evidence, the following:

First, the Defendant intentionally or knowingly offered another or conferred on another or agreed to conferred on another or solicited from another or accepted from another or agreed to accept from another any benefit that is a political contribution as defined by Title 15, Election Code or that is an expenditure made and reported in accordance with Chapter 305, Government Code,

Second, the benefit was offered or conferred or solicited or accepted or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.

"Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

"Public servant" means a person elected, even if the person had not yet qualified for office or assumed his duties, who was an officer or employee or agent of government; or a candidate for nomination or election to public office.

QUESTION NO. 17.1

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C)
(JACKSON/CLAY/MARSHALL ENTERPRISE)

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, participated in the alleged Jackson/Clay/Marshall criminal association-in-fact enterprise and engaged in a pattern of racketeering in violation of 18 U.S.C. § 1962(C) that injured GRG?

	Answer "Yes" or "No."
Marshall Defendants	yes
Clay Defendants	yes
Jackson Defendants	yes

Instruction No. 18

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(D), CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE (JACKSON/CLAY/MARSHALL ENTERPRISE)

Plaintiff GRG has brought a claim against the Marshall, Clay, and Jackson Defendants for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. GRG specifically claims that the Marshall, Clay, and Jackson Defendants violated RICO § 1962(d) by conspiring to violate RICO § 1962(c). I've already given you instructions on the elements of a violation of § 1962(c). Now you must decide if Plaintiff has proved by a preponderance of the evidence whether two or more of the defendants engaged in a conspiracy to violate RICO § 1962(c).

Generally, a RICO "conspiracy" is an agreement by two or more people to commit an unlawful act. Put another way, it's a kind of partnership for illegal purposes. Every member of the conspiracy becomes the agent or partner of every other member. GRG doesn't have to prove that all the people named in the complaint were members of the conspiracy—or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself. And GRG doesn't have to prove that the conspirators were successful in carrying out the plan.

To prove a RICO conspiracy, GRG must prove each of the following three facts by a preponderance of evidence:

First, you must find that two or more people agreed to try to accomplish an unlawful plan to engage in a pattern of racketeering activity.

And second, you must find that a defendant agreed to the overall objective of the conspiracy. Or, as an alternative to the second element, you must find that a defendant agreed with at least one other defendant to commit two predicate acts as part of the conspiracy.

GRG may show an "agreement to the overall objective of the conspiracy" by circumstantial evidence that a defendant must have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. If GRG proves agreement on an overall objective, then it isn't necessary that a defendant agree to personally commit two predicate acts.

A defendant can also engage in a RICO conspiracy even if Defendants didn't agree to the conspiracy's overall objective. It's enough that Defendants engaged in a part of the conspiracy with at least one other defendant by committing at least two predicate acts—alone or with someone else.

While the essence of a RICO conspiracy is an agreement to further an endeavor that, if completed, would satisfy all the elements of a substantive RICO violation, GRG doesn't have to offer direct evidence of an agreement. The conspiracy's existence can be inferred from the participants' conduct. But a defendant must objectively manifest, through words or actions, Defendants' agreement to participate in the enterprise's affairs.

GRG doesn't have to show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated the details of the scheme, its object, or purpose, or the precise means by which the object or purpose was to be accomplished. Plaintiff also doesn't have to establish that all the means or methods alleged to carry out the alleged conspiracy were, in fact, agreed on, or that all the means or methods that were agreed on were actually used or put into operation. And Plaintiff doesn't have to prove that all persons alleged to be conspiracy members were actually members or that alleged conspirators succeeded in accomplishing their unlawful objectives.

But it isn't enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering Plaintiff alleges, without more, or that they agreed to participate in the affairs of the same alleged enterprise. It doesn't matter that the alleged conspirators participated in the conduct of the affairs of the alleged enterprise through different or dissimilar acts of racketeering activity so long as the alleged racketeering acts would—if actually committed—create a "pattern of racketeering activity" as I've defined it.

A defendant can become a member of a conspiracy without knowing all the unlawful scheme's details or without knowing the names and identities of all the other alleged conspirators. If Plaintiff proves by a preponderance of the evidence that a particular defendant has knowingly joined the alleged conspiracy, it doesn't matter that Defendants may not have participated in the alleged conspiracy or scheme's earlier stages.

Mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, doesn't necessarily prove the existence of a conspiracy. A person who doesn't have knowledge of a conspiracy, but who happens to act in a way that advances some object or purpose of conspiracy, doesn't become a conspirator.

GRG doesn't have to prove that a defendant actually committed any of the acts that Defendants may have agreed to commit to establish their membership in the conspiracy. To determine whether there was a conspiracy, you must consider all the evidence in the case. If you find that there was a conspiracy, then you can attribute the statements or acts of the co-conspirators to Defendants. If you find that there was not a conspiracy, then you can't attribute the statements or acts of co-conspirators to Defendants. If you find the conspiracy didn't exist, then you must find for Defendants. But if you're satisfied that the conspiracy existed, you must determine who the members of the conspiracy were.

If you find that a particular defendant is a member of another conspiracy, but not the one Plaintiffs charged, then you can't find that defendant liable in this case. Put another way, you can't find that a defendant violated § 1962(d) unless you find that the defendant were a member of the conspiracy charged— not some other separate conspiracy.

If you decide that a defendant conspired to violate RICO, you must decide whether that conspiracy caused GRG injury. The damages GRG may recover are those caused by the predicate acts committed by members of the conspiracy that injured GRG in its business or property.

If you conclude that a defendant joined in a conspiracy to violate RICO, that Defendant is responsible for all damages caused by predicate acts committed by members of the conspiracy that caused injury to GRG. It isn't necessary that every predicate act caused damage to GRG, but GRG can only recover for damages caused by a predicate act committed by a conspiracy member.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy existed as alleged, you should next determine whether each defendant under consideration willfully became a member of that conspiracy.

Question No. 18.1

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(D), CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE (JACKSON/CLAY/MARSHALL ENTERPRISE)

Which of the Defendants below, if any, do you find, by a preponderance of the evidence, knowingly and willfully agreed to participate in a conspiracy to form the Jackson/Clay/Marshall criminal association-in-fact enterprise and violate 18 U.S.C. § 1962(C) and therefore injured GRG?

	Answer "Yes" or "No."
Marshall Defendants	yes
Clay Defendants	yes
Jackson Defendants	yes

If your answer to Question 17.1 or 18.1 was "Yes" as to any Defendant, then answer the following question, otherwise do not answer the following question.

Question No. 18.2

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO), 18 U.S.C. § 1962(C), DAMAGES (JACKSON/CLAY/MARSHALL ENTERPRISE)

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for its damages, if any, proximately caused by the Marshall, Clay, and/or Jackson Defendants' racketeering activity?

2009 Loss of Profits: $ 290,677.00

January –May 2010 Loss of Profits: $ 160,833.00

Instruction No. 19

QUALIFIED IMMUNITY

If you have found Marshall liable with respect to Gil Ramirez Group, LLC's RICO claim, you must consider whether Marshall is entitled to what the law calls "qualified immunity." Qualified immunity exists to give government officials breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection to all but plainly incompetent government officials, or those who knowingly violate the law. It is Gil Ramirez Group, LLC's burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case.

Qualified immunity applies if a reasonable official could have believed that a particular act was lawful in light of clearly established law and the information the official possessed. But an official is not entitled to qualified immunity if, at the time of the act, a reasonable official with the same information could not have believed that his actions were lawful.

Here, Marshall contends that a reasonable school board trustee could have believed that the following acts were lawful in light of the law existing prior to the non-renewal of Gil Ramirez Group, LLC's 2008 JOC contract on January 7, 2010:

- that Marshall could accept payments from Clay, a consultant to various HISD contractors, for mentorship that Marshall provided to Clay in connection with her consulting services to those contractors;
- that Marshall, as an HISD Board member, could vote on HISD Board agenda items involving JOC contractors for whom Clay had a consulting relationship;
- that Marshall, as an HISD Board member, could facilitate meetings between various JOC contractors and HISD personnel;
- that Marshall, as an HISD Board member, could meet with HISD vendors while those vendors had contracts or were seeking contracts with HISD;
- that Marshall, as an HISD Board member, could receive gifts and other items of value, such as sports tickets, from vendors who were currently doing business or seeking to do business with HISD.

If, after considering the scope of discretion and responsibility generally given to school board trustees in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Marshall at the time of the acts listed above, you find that Gil Ramirez Group, LLC failed to prove that no reasonable official could have believed that the acts were lawful, then Marshall is entitled to qualified immunity, on Gil Ramirez Group, LLC's RICO claim.

Question No. 19.1

Do you find, by a preponderance of the evidence, that Marshall could reasonably have believed that he could accept payments from Clay, a consultant to various HISD contractors, for mentorship that Marshall provided to Clay in connection with her consulting services to those contractors?

Answer "Yes" or "No."

NO

Instruction No. 20
DUTY TO DELIBERATE

It is your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a jury foreperson to guide you in your deliberations and to speak for you here in the courtroom.

Your verdict must be unanimous. After you have reached a unanimous verdict, your jury foreperson must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case.

If you need to communicate with me during your deliberations, the jury foreperson should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question. You may now proceed to the jury room to begin your deliberations.

11/16/16

Foreperson of the Jury **Date**