INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well as those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Don't take anything I say in the instructions as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions

related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents, photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by

the Court—and any witness statement or tangible item that was stricken by the Court—must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision

simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone—including me—how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Again, nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NO. 3

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider several things: the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection, lapse of memory, or a lie—and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 5

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the "preponderance of the evidence" is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. But the preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." This is a stricter standard, which applies only in criminal

cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 6

Certain charts and summaries—called demonstratives—have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those demonstratives are used for convenience. They are not themselves evidence or proof of any facts. If any demonstrative does not correctly reflect the facts shown by the evidence in the case, you should disregard the demonstrative and determine the facts from the books, records, or other underlying evidence.

INSTRUCTION NO. 7

You will remember that other summaries and charts were admitted in evidence. You may use those summaries and charts as evidence, even though the underlying documents and records may or may not be in evidence. It is for you to decide how much weight, if any, you will give these summaries. In making that decision, you should consider all the testimony you heard about the way in which they were prepared and any underlying documents.

INSTRUCTION NO. 8

It is the sworn duty of the lawyer on each side of the case to object when the other side offers testimony or exhibits which that attorney believes are not properly admissible. Only by raising an objection can a lawyer request and obtain a ruling from the court on the admissibility of that evidence being offered by the other side. You should not be influenced against a lawyer or his client because the lawyer has made objections. Do not attempt, moreover, to interpret my rulings on objections as somehow indicating to you who I think should win or lose the case.

INSTRUCTION NO. 9

All parties to a lawsuit are entitled to the same fair and impartial consideration, whether they are a company such as Retzer LLC, or an individual, such as each of the former employees and Michael L. Retzer Sr.

When I use the term "former employee" in these instructions, I mean each of the four individuals who brought this case—Jonathan Love, Sheri McWilliams, Tracy Keen, and Robin Love.

When I use the term "Retzer" in these instructions, I mean Retzer LLC and Michael L. Retzer Sr., both of whom have been sued.

INSTRUCTION NO. 10

Each of the four former employees asserts a separate claim against Retzer LLC and Michael L. Retzer Sr. Each person bears the burden of proving his or her claim that Retzer failed to pay him or her minimum wages, overtime, or both. You must consider each person separately, and determine whether he or she has sustained the burden of proof on his or her claim for minimum wages, overtime, or both. Your verdict for each of the former employees or Retzer as to each claim should also be considered separately. Of course, some evidence may pertain to more than one person or claim.

INSTRUCTION NO. 11

The phrase "hours worked" includes all time spent by an employee that was primarily for the benefit of the employer or the employer's business. This time constitutes "hours worked" if the employer knew or should have known that the work was being performed. Periods during which an employee is completely relieved of duty that are long enough to enable the employee to use the time effectively for his or her own purposes are not "hours worked."

INSTRUCTION NO. 12

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry and must be counted as hours worked. These breaks promote the efficiency of the employee.

An employer, however, can treat a bona fide meal period as non-working time and does not have to pay wages for the meal period. A bona fide meal period is a break for the purpose of eating regular meals. Typically, the meal period runs for thirty minutes or longer. If the meal period is spent predominately for the benefit of the employer, it is not bona fide, and the employee must be compensated for the entire period.

INSTRUCTION NO. 13

An employer must pay at least minimum wage for all hours worked by an employee each work week. The minimum wage rate applicable to this case is $7.25 per hour.

You may have heard about other minimum wage rates that may be applicable in other states. You must not consider any minimum wage rate other than $7.25 per hour.

INSTRUCTION NO. 14

The Fair Labor Standards Act requires an employer engaged in commerce or the production of goods for commerce to pay overtime compensation to an employee who works more than 40 hours in a work week. The Act also requires that the overtime compensation be at a rate not less than one and one-half times the employee's regular rate of pay.

If the employee is employed solely at a single hourly rate, the hourly rate is his regular rate of pay.

INSTRUCTION NO. 15

A "work week" is a regularly recurring period of seven days or 168 hours as designated by the employer. In this case, the parties have stipulated—that is, they have agreed—that the work week was from 12:01 a.m. Monday morning until midnight Sunday night.

INSTRUCTION NO. 16

Your verdict must be for the former employee and against Retzer if all of the following elements have been proved:

First, the person was employed by Retzer on or after 10 September 2011. This element is agreed by the parties.

Second, in former employee's work for Retzer, the former employee was engaged in commerce or in the production of goods for commerce or was employed by an enterprise engaged in commerce or the production of goods for commerce that had annual gross sales of at least $500,000.This element is agreed by the parties.

Third, Retzer failed to pay the former employee the minimum wage for all hours worked by him or her in one or more work weeks.

INSTRUCTION NO. 17

Your verdict must be for the former employee and against Retzer if all of the following elements have been proved:

First, the person was employed by Retzer on or after 10 September 2011. This element is agreed by the parties.

Second, in the former employee's work for Retzer, the former employee was engaged in commerce or in the production of goods for commerce or was employed by an enterprise engaged in commerce or the production of goods for commerce that had annual gross sales of at least $500,000. This element is agreed by the parties.

Third, Retzer failed to pay the former employee overtime pay for all hours he or she worked in excess of 40 in one or more work weeks.

INSTRUCTION NO. 18

You must determine the number of hours worked by each former employee based on all of the evidence. Retzer is required by law to maintain accurate records of its employees' hours worked. If you find that Retzer failed to maintain accurate records of the individual's hours worked, you must accept the former employee's estimate of hours worked unless you find it to be unreasonable.

INSTRUCTION NO. 19

If you find in favor of a former employee under instruction Nos. 16 or 17, you must award him or her damages in the amount that he or she should have been paid in minimum wages, overtime, or both, minus what Retzer actually paid the person.

The minimum wage amount that should have been paid is the number of hours worked in each work week up to 40 hours, times the minimum wage applicable to that work week, as set forth in instruction No. 13.

The overtime amount that should have been paid is the number of hours worked in excess of 40 hours in each work week, times the regular rate for that work week times one and one-half, as set forth in instruction No. 14.

You must calculate these amounts separately for each former employee for each work week.

In determining the amount of damages for the former employee, you may not include or add to the damages any sum to punish Retzer.

INSTRUCTION NO. 20

The fact that I have instructed you on the measure of damages should not be considered by you as suggesting any view of mine on which side of this litigation is entitled to receive your verdict. Instructions on the measure of damages are given for your guidance, as in all cases, in the event you find the issue of liability in favor of one or more of the former employees on their claims from a preponderance of the evidence.

The question of damages is entirely distinct and different from the question of liability. You should not consider whether a former employee has been damaged until you have first considered and decided whether Retzer is liable to him or her.

INSTRUCTION NO. 21

Finally, the verdicts are simply the written notice of the decisions that you reach in this case. I'll read them now. There is one for each former employee. You will take these verdicts to the jury room, and when each of you has agreed on the answers, your foreperson will fill in each verdict that you are called upon to answer to reflect your unanimous decision, sign and date them, and then advise the court security officer that you are ready to return to the courtroom.

I add the caution that nothing said in the instructions—and nothing in the form of the verdicts I've prepared for your convenience—is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdicts shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the Jury, on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issues presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?