

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALEXANDER ASSOCIATES, INC.,

Plaintiff,

v.

Case No. 12-10226

WHIRLWAY CORPORATION,

Defendant.

ORDER ESTABLISHING JURY INSTRUCTIONS

Plaintiff Alexander Associates, Inc. sues Whirlaway Corporation for breach of contract and for violation of the Michigan Sales Representative Commission Act (SCRA). The parties proposed jury instructions, but left three disputes unresolved. Following this court's order directing further briefing on August 22, 2013, the parties have agreed as follows:

1. In the section on burden of proof on page 7, Defendant now agrees that the phrase "clearly and convincingly" should be deleted. The instruction now states (in relevant part): "In determining whether any fact in issue has been proved, by a preponderance of the evidence in the case, you may 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."

2. In the section on damages on page 12, Defendant withdraws its objection to Plaintiff's proposed definition of "life of the part," which states: "I instruct you that the

term 'life of the part' means the full production life of the part. Minor changes to a part do not affect the life of the part as long as the part remains substantially the same."

3. Plaintiff withdraws its suggested changes to the instruction defining "actual damages" under the SCRA on page 12. The section now states:

A principal who fails to comply with these SCRA time limits is liable to the sales representative for:

1. Any actual damages—that is, the commissions themselves, plus reasonable interest—caused by the failure to timely pay; and
2. If the principal deliberately and intentionally failed to pay the commission when due, an additional amount, not to exceed \$100,000, that is twice the amount of commissions due but not timely paid.

Accordingly,

IT IS ORDERED that the proposed jury instructions be modified to reflect the above edits.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 27, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 27, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522