



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PATRICK BYRNE, an individual,

Plaintiff,

vs.

AMERIS BANK, a Georgia corporation,

Defendant.

Case No. 8:24-cv-01989-MWC (JDEx)

JURY INSTRUCTIONS

Judge: Hon. Michelle Williams Court

Dept.: Courtroom 6A

Trial Date: June 1, 2026

JURY INSTRUCTIONS

Table of Contents

1. Duty of Jury	4
2. Duty of Jury (Court Reads and Provides Written Instructions at End of Case)	5
3. Claims and Defenses	6
4. Burden of Proof—Preponderance of the Evidence	7
5. Burden of Proof—Clear and Convincing Evidence	8
6. What Is Evidence	9
7. What Is Not Evidence	10
8. Evidence for Limited Purpose	11
9. Direct and Circumstantial Evidence	12
10. Bias	13
11. Ruling on Objections	14
12. Credibility of Witnesses	15
13. Conduct of the Jury	16
14. Publicity During Trial	18
15. No Transcript Available to Jury	19
16. Taking Notes	20
17. Questions to Witnesses by Jurors	21
18. Bench Conferences and Recesses	22
19. Outline of Trial	23
20. Cautionary Instructions	24
21. Deposition in Lieu of Live Testimony	25
22. Impeachment Evidence—Witness	26
23. Expert Opinion Testimony	27
24. Charts and Summaries Not Received in Evidence	28
25. Charts and Summaries Received in Evidence	29
26. Evidence in Electronic Format	30
27. Consideration of Evidence -- Conduct of the Jury	31

28. Communication With Court.....	32
29. Corporations and Partnerships—Fair Treatment.....	33
30. Damages.....	34
31. Damages—Mitigation.....	35
32. Nominal Damages	36
33. Breach of Contract—Introduction	37
34. Breach of Contract—Essential Factual Elements	38
35. Interpretation—Meaning of Ordinary Words	39
36. Interpretation—Meaning of Technical Words.....	40
37. Interpretation—Rule Against Surplusage	41
38. Interpretation—Construction of Contract as a Whole	42
39. Interpretation—Construction by Conduct.....	43
40. Interpretation—Construction Against Drafter.....	44
41. Obligation to Pay Money Only	45
42. Nonpayment of Wages—Essential Factual Elements (Lab. Code, §§ 201, 202, 218)	46
43. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218).....	47
44. Wrongful Discharge in Violation of Public Policy—Essential Factual Elements.....	46
45. Limitation on Remedies—After-Acquired Evidence.....	49
46. “Substantial Motivating Reason” Explained.....	50
47. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5).....	51
48. Affirmative Defense—Same Decision (Lab. Code, § 1102.6)	52
49. Punitive Damages—Entity Defendant—Bifurcated Trial (First Phase).....	51
50. Implicit or Unconscious Bias	54
51. Duty to Deliberate	55
52. Return of Verdict.....	56
53. Post-Discharge Instruction	57

1. Duty of Jury

Members of the jury: You are now the jury in this case. It is my duty to instruct you on the law.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

At the end of the trial I will give you final instructions. It is the final instructions that will govern your duties.

Please do not read into these instructions, or anything I may say or do, that I have an opinion regarding the evidence or what your verdict should be.

2. Duty of Jury (Court Reads and Provides Written Instructions at End of Case)

Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct you on the law that applies to this case.

A copy of these instructions will be sent to the jury room for you to consult during your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

3. Claims and Defenses

Plaintiff Patrick Byrne asserts claims against Defendant Ameris Bank arising out of his employment with Defendant, specifically Defendants' calculation and alleged under payment of incentive compensation under the parties' Long-Term Incentive Plan ("LTIP") and Plaintiff's termination from Ameris. The plaintiff has the burden of proving these claims.

Defendant Ameris denies all of Plaintiff's claims. Ameris further contends that any dispute over the calculation of Plaintiff's LTIP cash awards was a good faith dispute, that that Plaintiff failed to take reasonable steps to mitigate his damages, and that during the course of this litigation, it discovered evidence of independently terminable misconduct by Plaintiff that Ameris was unaware of at the time of his termination, and that this misconduct would have resulted in his termination had it been known. The defendant has the burden of proof on these affirmative defenses.

The Plaintiff denies the Defendant's affirmative defenses.

4. Burden of Proof—Preponderance of the Evidence

When a party has the burden of proving any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

5. Burden of Proof—Clear and Convincing Evidence

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

6. What Is Evidence

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits that are admitted into evidence;
- (3) any facts to which the lawyers have agreed; and
- (4) any facts that I may instruct, or have instructed you to accept as proved.

7. What Is Not Evidence

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
- (3) Testimony that is excluded or stricken, or that you are instructed to disregard, is not evidence and must not be considered. In addition, some evidence may be received only for a limited purpose; when I instruct you to consider certain evidence only for a limited purpose, you must do so, and you may not consider that evidence for any other purpose.
- (4) Anything you may see or hear when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

8. Evidence for Limited Purpose

Some evidence may be admitted only for a limited purpose.

When I instruct you that an item of evidence has been admitted only for a limited purpose, you must consider it only for that limited purpose and not for any other purpose.

9. Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

10. Bias

Each one of us has biases about or certain perceptions or stereotypes of other people. Bias is a tendency to favor or disfavor a person or group of people. We may be aware of some of our biases, though we may not reveal them to others. We may not be fully aware of some of our other biases. We refer to biases that we are not fully aware of as “implicit” or “unconscious.” They may be based on stereotypes we would reject if they were brought to our attention. Implicit or unconscious biases can affect how we perceive others and how we make decisions, without our being aware of the effect of these biases on those decisions.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, and whom we believe or disbelieve. We may favor or be more likely to believe people whom we see as similar to us or with whom we identify. Or we may disfavor or be less likely to believe people whom we see as different from us.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against parties, attorneys, or witnesses because of their race, national origin, ethnicity, disability, gender, gender identity, gender expression, religion, sexual orientation, age, or socioeconomic status.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, attorney, or witness.

11. Ruling on Objections

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore that evidence. That means when you are deciding the case, you must not consider the stricken evidence for any purpose.

12. Credibility of Witnesses

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

13. Conduct of the Jury

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone, tablet, or computer, or any other electronic means, via email, text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, the platform “X” formerly known as Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case, and how long you expect the trial to last. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch or listen to any news or media accounts or commentary about the case or anything to do with it[,although I have no information that there will be news reports about this case]; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or any other resource to search for or view any place discussed during the trial. Also, do not do any research about this case, the law, or the people involved—including the parties, the witnesses or the lawyers—until you have been excused as jurors. If you happen to read or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect each party’s right to have this case decided only on evidence that has been presented here in court. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through the trial process. If you do any research or investigation outside the courtroom, or gain any information through improper communications, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the case based on information not presented in court, you will have denied the parties a fair trial. Remember, you have taken an oath to follow the rules, and it is very important that you follow these rules.

A juror who violates these restrictions jeopardizes the fairness of these proceedings [, and a mistrial could result, requiring the entire trial process to start over]. If any juror is exposed to any outside information, please notify the court immediately, by sending a note through the [clerk] [bailiff] signed by any one or more of you.

Comment

This instruction has been updated specifically to instruct jurors against accessing electronic sources of information and communicating electronically about the case, as well as to inform jurors of the potential consequences if a juror violates this instruction. An abbreviated instruction should be repeated before the first recess, and as needed before other recesses.

The practice in federal court of repeatedly instructing jurors not to discuss the case until deliberations is widespread. *See, e.g., United States v. Pino-Noriega*, 189F.3d1089,1096(9th Cir. 1999) (“most judges continually admonish their juries during trials not to discuss the evidence or begin deliberating until told to do so”).

State court practice in some jurisdictions does allow discussion of the case by jurors prior to the beginning of deliberations. The Ninth Circuit has not addressed this practice.

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14. Publicity During Trial

If there is any news media account or commentary about the case or anything to do with it, you must ignore it. You must not read, watch or listen to any news media account or commentary about the case or anything to do with it. The case must be decided by you solely and exclusively on the evidence that will be received in the case and on my instructions as to the law that applies. If any juror is exposed to any outside information, please notify me immediately.

15. No Transcript Available to Jury

I urge you to pay close attention to the trial testimony as it is given. During deliberations you will not have a transcript of the trial testimony.

16. Taking Notes

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you go to the jury room to decide the case. Do not let notetaking distract you. When you leave, your notes should be left in the courtroom. No one will read your notes.

17. Questions to Witnesses by Jurors

Only the lawyers and I are allowed to ask questions of witnesses. A juror is not permitted to ask questions of witnesses. If, however, you are unable to hear a witness or a lawyer, please raise your hand and I will correct the situation.

18. Bench Conferences and Recesses

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

19. Outline of Trial

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

20. Cautionary Instructions

At the End of Each Day of the Case:

As I indicated before this trial started, you as jurors will decide this case based solely on the evidence presented in this courtroom. This means that, after you leave here for the night, you must not conduct any independent research about this case, the matters in the case, the legal issues in the case, or the individuals or other entities involved in the case. This is important for the same reasons that jurors have long been instructed to limit their exposure to traditional forms of media information such as television and newspapers. You also must not communicate with anyone, in any way, about this case. And you must ignore any information about the case that you might see while browsing the Internet or your social media feeds.

At the Beginning of Each Day of the Case:

As I reminded you yesterday and continue to emphasize to you today, it is important that you decide this case based solely on the evidence and the law presented here. So you must not learn any additional information about the case from sources outside the courtroom. To ensure fairness to all parties in this trial, I will now ask each of you whether you have learned about or shared any information about this case outside of this courtroom, even if it was accidental.

If you think that you might have done so, please let me know now by raising your hand. [Wait for a show of hands]. I see no raised hands; however, if you would prefer to talk to the court privately in response to this question, please notify a member of the court's staff at the next break. Thank you for your careful adherence to my instructions.

21. Deposition in Lieu of Live Testimony

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.

Insofar as possible, you should consider deposition testimony, presented to you in court in lieu of live testimony, in the same way as if the witness had been present to testify.

22. Impeachment Evidence—Witness

The evidence that a witness has been convicted of a crime or lied under oath on a prior occasion, may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

23. Expert Opinion Testimony

You have heard testimony from expert witnesses who testified about their opinions and the reasons for those opinions. This opinion testimony is allowed, because of the specialized knowledge, skill, experience, training, or education of this witness.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves, considering the witness's specialized knowledge, skill, experience, training, or education, the reasons given for the opinion, and all the other evidence in the case.

24. Charts and Summaries Not Received in Evidence

Certain charts and summaries not admitted into evidence have been shown to you to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

25. Charts and Summaries Received in Evidence

Certain charts and summaries have been admitted into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the testimony or other admitted evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

26. Evidence in Electronic Format

Those exhibits received in evidence that are capable of being displayed electronically will be provided to you in that form, and you will be able to view them in the jury room. A computer, projector, printer, and accessory equipment will be available to you in the jury room.

A court technician will show you how to operate the computer and other equipment; how to locate and view the exhibits on the computer; and how to print the exhibits. You will also be provided with a paper list of all exhibits received in evidence. You may request a paper copy of any exhibit received in evidence by sending a note through the clerk. If you need additional equipment or supplies or if you have questions about how to operate the computer or other equipment, you may send a note to the clerk, signed by your foreperson or by one or more members of the jury. Do not refer to or discuss any exhibit you were attempting to view.

If a technical problem or question requires hands-on maintenance or instruction, a court technician may enter the jury room with the clerk present for the sole purpose of assuring that the only matter that is discussed is the technical problem. When the court technician or any nonjuror is in the jury room, the jury shall not deliberate. No juror may say anything to the court technician or any nonjuror other than to describe the technical problem or to seek information about operation of the equipment. Do not discuss any exhibit or any aspect of the case.

The sole purpose of providing the computer in the jury room is to enable jurors to view the exhibits received in evidence in this case. You may not use the computer for any other purpose. At my direction, technicians have taken steps to ensure that the computer does not permit access to the Internet or to any “outside” website, database, directory, game, or other material. Do not attempt to alter the computer to obtain access to such materials. If you discover that the computer provides or allows access to such materials, you must inform the court immediately and refrain from viewing such materials. Do not remove the computer or any electronic data [disk] from the jury room, and do not copy any such data.

27. Consideration of Evidence -- Conduct of the Jury

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations.

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone, tablet, computer, or any other means, via email, via text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, the platform “X” formerly known as Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it[, although I have no information that there will be news reports about this case]; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own. Do not visit or view any place discussed in this case, and do not use Internet programs or other devices to search for or view any place discussed during the trial. Also, do not do any research about this case, the law, or the people involved—including the parties, the witnesses or the lawyers—until you have been excused as jurors. If you happen to read or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect each party’s right to have this case decided only on evidence that has been presented here in court. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through the trial process. If you do any research or investigation outside the courtroom, or gain any information through improper communications, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the case based on information not presented in court, you will have denied the parties a fair trial. Remember, you have taken an oath to follow the rules, and it is very important that you follow these rules.

A juror who violates these restrictions jeopardizes the fairness of these proceedings[, and a mistrial could result that would require the entire trial process to start over]. If any juror is exposed to any outside information, please notify the court immediately.

28. Communication With Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the deputy, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

29. Corporations and Partnerships—Fair Treatment

All parties are equal before the law and a corporation is entitled to the same fair and conscientious consideration by you as any party.

30. Damages

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for the plaintiff on the plaintiff's breach of contract, wrongful termination, retaliation, and/or failure to pay wages claims, you must determine the plaintiff's damages. The plaintiff Byrne has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiff Byrne for any injury you find was caused by the defendant Ameris. You should consider the following:

The reasonable value of any amount provided for in the contract;

The emotional pain and suffering experienced and that with reasonable probability will be experienced in the future;

The reasonable value of wages lost up to the present time;

The reasonable value of wages that with reasonable probability will be lost in the future.

It is for you to determine what damages, if any, have been proved.

Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

31. Damages—Mitigation

The plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The defendant has the burden of proving by a preponderance of the evidence:

First, that the plaintiff failed to use reasonable efforts to mitigate damages; and

Second, the amount by which damages would have been mitigated.

32. Nominal Damages

The law that applies to this case authorizes an award of nominal damages. If you find for the plaintiff but you find that the plaintiff has failed to prove damages as defined in these instructions, you must award nominal damages. Nominal damages may not exceed one dollar.

33. Breach of Contract—Introduction

Patrick Byrne claims that he and Ameris Bank entered into a contract, which incorporates a Long Term Cash Incentive Plan (“LTIP”), for, among other things, Patrick Byrne to serve as an employee of Ameris Bank, and, in return, for Ameris Bank to pay Patrick Byrne a cash award at the end of each year should Patrick Byrne’s division within Ameris Bank meet certain performance criteria. The contract also provides that, should Patrick Byrne be terminated without cause before a year has ended, Patrick Byrne shall receive his full cash award from that year if Patrick Byrne’s division within Ameris Bank meets its performance criteria at the end of that year.

Patrick Byrne claims that Ameris Bank breached this contract and the LTIP by applying the incorrect calculation method to Patrick Byrne’s division’s performance and consequently failing to pay Patrick Byrne his cash award for the years 2022, 2023, and 2024.

Patrick Byrne also claims that Ameris Bank’s breach of this contract caused harm to him for which Ameris Bank should pay.

Ameris Bank denies these claims.

34. Breach of Contract—Essential Factual Elements

To recover damages from Ameris Bank for breach of contract, Patrick Byrne must prove all of the following:

1. That Patrick Byrne and Ameris Bank entered into a contract;
2. That Patrick Byrne did all, or substantially all, of the significant things that the contract required him to do or that Patrick Byrne was excused from having to do all, or substantially all, of the significant things that the contract required him to do;
3. That all conditions required by the contract for Ameris Bank's performance occurred or that all of the required conditions that did not occur excused or waived;
4. That Ameris Bank failed to do something that the contract required it to do or that Ameris Bank did something that the contract prohibited it from doing;
5. That Patrick Byrne was harmed; and
6. That Ameris Bank's breach of contract was a substantial factor in causing Patrick Byrne's harm.

35. Interpretation—Meaning of Ordinary Words

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

36. Interpretation—Meaning of Technical Words

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

37. Interpretation—Rule Against Surplusage

In deciding what the words of the contract meant to the parties, you should give effect and meaning to every word, clause, and provision in the contract and avoid an interpretation that renders any part of the contract redundant, superfluous, or irrelevant, and ensure that no provision is ignored.

38. Interpretation—Construction of Contract as a Whole

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

39. Interpretation—Construction by Conduct

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

40. Interpretation—Construction Against Drafter

In determining the meaning of the words of the contract, you must first consider all of the other instructions that I have given you. If, after considering these instructions, you still cannot agree on the meaning of the words, then you should interpret the contract against the party that drafted the disputed words.

41. Obligation to Pay Money Only

To recover damages for the breach of a contract to pay money, Patrick Byrne must prove the amount due under the contract.

42. Nonpayment of Wages—Essential Factual Elements (Lab. Code, §§ 201, 202, 218)

Patrick Byrne claims that Ameris Bank owes him unpaid wages. To establish this claim, Patrick Byrne must prove all of the following:

1. That Patrick Byrne performed work for Ameris Bank;
2. That Ameris Bank owes Patrick Byrne wages under the terms of the employment agreement and the LTIP agreement for 2022 and 2023; and
3. The amount of unpaid wages.

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

“Wages” also includes incentive compensation, such as bonuses and profit-sharing plans. Once a bonus has been promised as part of the compensation for service, and the employee fulfills all the agreed-to conditions, the promised bonus is considered wages that must be paid.

43. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218)

Patrick Byrne claims that he is entitled to recover a penalty based on Ameris Bank's failure to pay his wages when due after Patrick Byrne's employment ended. Ameris Bank was required to pay Patrick Byrne all wages owed on the date that Patrick Byrne's employment ended.

You must decide whether Patrick Byrne has proved he is entitled to recover a penalty. I will decide the amount of the penalty, if any, to be imposed. To recover this penalty, Patrick Byrne must prove both of the following:

1. That Patrick Byrne's employment with Ameris Bank ended; and
2. That Ameris Bank willfully failed to pay Patrick Byrne all wages when due.

The term "willfully" means only that the employer intentionally failed or refused to pay the wages. It does not imply a need for any additional bad motive.

Patrick Byrne must also prove the following:

1. Patrick Byrne's daily wage rate at the time his employment with Ameris Bank ended; and
2. The date on which Ameris Bank finally paid Patrick Byrne all wages due or that Ameris Bank never paid Patrick Byrne all wages.

The term "wages" includes all amounts for labor performed by an employee, whether the amount is calculated by time, task, piece, commission, or some other method.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

44. Wrongful Discharge in Violation of Public Policy—Essential Factual Elements

Patrick Byrne claims he was discharged from employment for reasons that violate a public policy. California has a fundamental public policy, delineated in statutory provisions governing the payment of earned wages to employees, including the prompt payment of wages due employees. It is a violation of public policy to discharge someone from employment for disclosing to their superior's the employer's potential violation of California labor law for failing to pay earned wages to its employees. To establish this claim, Patrick Byrne must prove all of the following:

1. That Patrick Byrne was employed by Ameris Bank;
2. That Ameris Bank discharged Patrick Byrne;
3. That Ameris Bank reducing Patrick Byrne's job responsibilities and terminating his employment for complaining about Ameris Bank's failure to pay earned wages was a substantial motivating reason for Patrick Byrne's discharge;
4. That Patrick Byrne was harmed; and
5. That the discharge was a substantial factor in causing Patrick Byrne harm.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

45. Limitation on Remedies—After-Acquired Evidence

Ameris Bank claims that after it discharged Patrick Byrne, it discovered Patrick Byrne sent himself confidential Ameris Bank documents from his Ameris Bank e-mail account to his personal e-mail account in violation of Ameris Bank policies. Ameris Bank claims it would have discharged Patrick Byrne anyway if it had known that he violated Ameris Bank policies. You must decide whether Ameris Bank has proved all of the following:

1. That Patrick Byrne took confidential, trade secrets, proprietary Ameris Bank documents, including sending to his personal e-mail address in violation of Ameris Bank's policies;
2. That Patrick Byrne's misconduct was sufficiently severe that Ameris Bank would have discharged him because of that misconduct alone had Ameris Bank known of it; and
3. That Ameris Bank would have discharged Patrick Byrne for his misconduct as a matter of settled company policy.

If you find that Ameris Bank has proved that Patrick Byrne sent confidential Ameris Bank documents to his personal e-mail address and that had Ameris Bank known of the misconduct earlier, it would have discharged Patrick Byrne as required by the elements above, then Patrick Byrne may recover damages only for any time before the date on which Ameris Bank discovered the misconduct.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

46. “Substantial Motivating Reason” Explained

A “substantial motivating reason” is a reason that actually contributed to the discharge. It must be more than a remote or trivial reason. It does not have to be the only reason motivating the discharge.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

47. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5)

Patrick Byrne claims that Ameris Bank discharged him in retaliation for his disclosure of information of an unlawful act. To establish this claim, Patrick Byrne must prove all of the following are more likely true than not true:

1. That Ameris Bank was Patrick Byrne’s employer;
2. That Patrick Byrne disclosed to a person with authority over him or an employee with authority to investigate, discover, or correct legal violations/noncompliance that Ameris Bank failed to pay Byrne and other Balboa employees, the earned compensation they were owed;
3. That Patrick Byrne had reasonable cause to believe that the information disclosed a violation of a state or federal statute; a local, state or federal rule or regulation;
4. That Ameris Bank discharged Patrick Byrne;
5. That Patrick Byrne’s disclosure of information was a contributing factor in Ameris Bank’s decision to discharge him;
6. That Patrick Byrne was harmed; and
7. That Ameris Bank’s conduct was a substantial factor in causing Patrick Byrnes harm.

A “contributing factor” is any factor, which alone or in connection with other factors, tends to affect the outcome of a decision. A contributing factor can be proved even when other legitimate factors also contributed to the employer’s decision.

The disclosure of policies that an employee believes to be merely unwise, wasteful, gross misconduct, or the like, is not protected. Instead, Patrick Byrne must have reasonably believed that Ameris Bank’s policies violated federal, state, or local statutes, rules, or regulations.

It is not Patrick Byrne’s motivation for his disclosure, but only the content of that disclosure, that determines whether the disclosure is protected.

A disclosure is protected even though disclosing the information may be part of Patrick Byrne’s job duties.

A disclosure is protected even though the employer already knew about the information disclosed.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

48. Affirmative Defense—Same Decision (Lab. Code, § 1102.6)

If Patrick Byrne proves that his disclosure of information of an unlawful act was a contributing factor to his discharge, Ameris Bank is not liable if it proves by clear and convincing evidence that it would have discharged Patrick Byrne anyway at that time for legitimate, independent reasons.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

49. Punitive Damages—Entity Defendant—Bifurcated Trial (First Phase)

If you decide that Ameris Bank's conduct caused Patrick Byrne harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later.

At this time, you must decide whether Patrick Byrne has proved that Ameris Bank engaged in that conduct with malice, oppression, or fraud. To do this, Patrick Byrne must prove one of the following by clear and convincing evidence:

1. That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of Ameris Bank who acted on behalf of Ameris Bank; or
2. That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of Ameris Bank; or
3. That one or more officers, directors, or managing agents of Ameris Bank knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.

“Malice” means that Ameris Bank acted with intent to cause injury or that Ameris Bank's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when the person is aware of the probable dangerous consequences of the person’s conduct and deliberately fails to avoid those consequences.

“Oppression” means that Ameris Bank’s conduct was despicable and subjected Patrick Byrne to cruel and unjust hardship in knowing disregard of his rights.

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

“Fraud” means that Ameris Bank intentionally misrepresented or concealed a material fact and did so intending to harm Patrick Byrne.

An employee is a “managing agent” if the person exercises substantial independent authority and judgment in the person’s corporate decisionmaking such that the person’s decisions ultimately determine corporate policy.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

50. Implicit or Unconscious Bias

In your role as a juror, you must not let bias influence your assessment of the evidence or your decisions.

I will now provide some information about how bias might affect decisionmaking. Our brains help us navigate and respond quickly to events by grouping and categorizing people, places, and things. We all do this. These mental shortcuts are helpful in some situations, but in the courtroom they may lead to biased decisionmaking.

Bias can affect what we notice and pay attention to, what we see and hear, what we remember, how we perceive people, and how we make decisions. We may favor or be more likely to believe people whom we see as similar to us or with whom we identify. Conversely, we may disfavor or be less likely to believe people whom we see as different from us.

Although we are aware of some of our biases, we may not be aware of all of them. We refer to biases that we are not aware of as “implicit” or “unconscious.” They may be based on stereotypes we would reject if they were brought to our attention. Implicit or unconscious biases can affect how we perceive others and how we make decisions, without our being aware of the effect of these biases on those decisions.

To ensure that bias does not affect your decisions in this case, consider the following steps:

1. Reflect carefully and thoughtfully about the evidence. Think about why you are making each decision and examine it for bias. Resist the urge to jump to conclusions or to make judgments based on personal likes or dislikes, generalizations, prejudices, stereotypes, or biases.
2. Consider your initial impressions of the people and the evidence in this case. Would your impressions be different if any of the people were, for example, of a different age, gender, race, religion, sexual orientation, ethnicity, or national origin? Was your opinion affected because a person has a disability or speaks in a language other than English or with an accent? Think about the people involved in this case as individuals. Focusing on individuals can help reduce the effect of biases or stereotypes on decisionmaking.
3. Listen to the other jurors. Their backgrounds, experiences, and insights may be different from yours. Hearing and sharing different perspectives may help identify and eliminate biased conclusions.

The law demands that jurors make unbiased decisions, and these strategies can help you fulfill this important responsibility. You must base your decisions solely on the evidence presented, your evaluation of that evidence, your common sense and experience, and these instructions.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

51. Duty to Deliberate

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

52. Return of Verdict

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

Patrick Byrne v. Ameris Bank
8:24-cv-01989-MWC-JDE

53. Post-Discharge Instruction

Now that the case has been concluded, some of you may have questions about the confidentiality of the proceedings. Now that the case is over, you are free to discuss it with any person you choose. By the same token, however, I would advise you that you are under no obligation whatsoever to discuss this case with any person.

If you do decide to discuss the case with anyone, I would suggest you treat it with a degree of solemnity in that whatever you do decide to say, you would be willing to say in the presence of the other jurors or under oath here in open court in the presence of all the parties.

Always bear in mind that if you do decide to discuss this case, the other jurors fully and freely stated their opinions with the understanding they were being expressed in confidence. Please respect the privacy of the views of the other jurors.

Finally, if you would prefer not to discuss the case with anyone, but are feeling undue pressure to do so, please feel free to contact the courtroom deputy, who will notify me and I will assist.