IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ELGIN EFEREBO,	)	**CASE NO. 8:09CV406**
	)	
Plaintiff,	)	
	)	
v.	)	**JURY INSTRUCTIONS**
	)	
PRIME THERAPEUTICS, INC.,	)	
	)	
Defendant.	)	

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

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

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

INSTRUCTION NO. 3

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, you may consider a witness's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any 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 or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is 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 the 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 in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 5

Your verdict must be for Plaintiff Elgin Eferebo and against Defendant Prime Therapeutics, Inc., on Mr. Eferebo's race and color discrimination claim if all of the following elements have been proved:

First, Prime Therapeutics failed to hire Mr. Eferebo on either occasion at issue; and

Second, Mr. Eferebo's race or color was a motivating factor or played a part in Prime Therapeutic's decision.

If either of the above elements has not been proved, your verdict must be for Defendant Prime Therapeutics, and you need not proceed further in considering this claim.

INSTRUCTION NO. 6

As used in these instructions, Elgin Eferebo's race or color was a "motivating factor," if Mr. Eferebo's race or color played a part or role in Prime Therapeutics's decision to not hire Mr. Eferebo. However, Mr. Eferebo's race or color need not have been the only reason for Prime Therapeutics's decision to not hire Mr. Eferebo.

INSTRUCTION NO. 7

You may find that Elgin Eferebo's race or color was a "motivating factor" in Prime Therapeutics's decision if it has been proved that Prime Therapeutics's stated reasons for its decisions are not the reasons, but are a pretext to hide race and color discrimination.

INSTRUCTION NO. 8

You may not return a verdict for Elgin Eferebo just because you might disagree with Prime Therapeutics's decisions or believe them to be harsh or unreasonable.

INSTRUCTION NO. 9

If you find in favor of Elgin Eferebo under Instruction No. 5, then you must answer the following question in the verdict form: Has it been proved that the Prime Therapeutics, Inc., would not have hired Elgin Eferebo regardless of his race or color?

INSTRUCTION NO. 10

You should consider and decide this case as a dispute between persons of equal standing in the community of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations stand equal before the law, and are to be tried as equals.

INSTRUCTION NO. 11

If you find in favor of Elgin Eferebo under Instruction No. 5 and if you answer "no" in response to Instruction No. 9, then you must award Mr. Eferebo such sum as you find will fairly and justly compensate Mr. Eferebo for any damages you find Mr. Eferebo sustained as a direct result of Prime Therapeutics's decision to not hire Mr. Eferebo.

First, you must determine the amount of any wages and fringe benefits Mr. Eferebo would have earned in his employment with Prime Therapeutics if he had been hired on December 15, 2007, or August 16, 2008, through the date of your verdict, *minus* the amount of earnings and benefits that Mr. Eferebo received from other employment during that time.

Second, you must determine the amount of any other damages sustained by Mr. Eferebo. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 12

If you find in favor of Elgin Eferebo under Instruction No. 5, and if you answer "no" in response to Instruction No. 9, but you find that Mr. Eferebo's damages have no monetary value, then you must return a verdict for Mr. Eferebo in the nominal amount of One Dollar ($1.00).

INSTRUCTION NO. 13

The parties to this action have stipulated – that is, they have agreed – to certain facts in this case. You should, therefore, treat those facts as having been proved.

1. On December 19, 2007, Prime posted a job opening for a Seasonal Assistant, a temporary position.
2. Eferebo applied for, and was interviewed for, the Seasonal Assistant position.
3. Kelli Barker (now Kelli Primm) was hired for the Seasonal Assistant position.
4. In June 2008, Prime posted a job opening for a Contact Center Supervisor.
5. Eferebo applied for, and was interviewed for, the Contact Center Supervisor Position.
6. Brian Conley was hired for the Contact Center Supervisor position.
7. Mr. Conley was qualified for Contact Center Supervisor position.
8. During his employment at Prime Plaintiff has never heard any jokes, remarks, or derogatory comments about his race or color.

INSTRUCTION NO. 14

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 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 Ms. Frahm, 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 not tell anyone - including me - how your votes stand numerically.

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

decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise Ms. Frahm or someone else in my chambers that you are ready to return to the courtroom.