**COMMERCIAL BRIBING FIRST DEGREE

Penal Law § 180.03**

**(Committed on or after Sept. 1, 1983)**

The (*specify*) count is Commercial Bribing in the First Degree.

Under our law a person is guilty of Commercial Bribing in the First Degree when that person confers, or offers or agrees to confer, any benefit upon any employee, [agent or fiduciary] without the consent of his or her employer [or principal], with intent to influence the employee’s, [agent’s or fiduciary’s] conduct in relation to his or her employer’s [or principal’s] affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars and causes economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

The following terms used in that definition have a special meaning:

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.1

INTENT means conscious objective or purpose. Thus, a person acts with intent to influence the conduct of an employee, [agent or fiduciary] in relation to his or her employer’s or [principal’s] affairs when that person’s conscious objective or purpose is to do so.2

ECONOMIC HARM TO THE EMPLOYER [OR PRINCIPAL] means actual economic loss suffered by the employer [or principal] which would not have been incurred in the absence of

1Penal Law §10.00(17). *See People v Feerick*, 93 N.Y.2d 433, 446-447

(1999).

2*See* Penal Law §15.05(1).

the corrupt arrangement.3

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following five elements:

1. That on or about (*date*), (*specify*) was an employee [agent or fiduciary] of (*specify employer or principal*);
2. That on or about that date, in the county of (*county*) the defendant (*defendant’s name*), conferred, or offered or agreed to confer, a benefit upon such employee [agent or fiduciary] which exceeded one thousand dollars;
3. That the defendant did so without the consent of (*specify employer or principal*);
4. That the defendant did so with intent to influence the employee's [agent's or fiduciary's] conduct in relation to his/her employer’s [or principal’s] affairs; and
5. That the defendant's conduct caused economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

3 *People v Wolf*, 98 N.Y.2d 105 (2002).

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