PRELIMINARY AND FINAL INSTRUCTIONS TO THE JURY

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PRELIMINARY INSTRUCTION NO. 1
PRELIMINARY INSTRUCTIONS

Members of the jury, consider these instructions, together with any oral instructions I give to you during the trial and the written instructions I give to you at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

PRELIMINARY INSTRUCTION NO. 2
SUMMARY OF THE CASE

The following is a brief summary of the case.

[Insert summary of case.]

This summary is not evidence, but only a brief description of the factual disputes you will be asked to resolve.

PRELIMINARY INSTRUCTION NO. 3

SUMMARY OF CLAIMS

To help you follow the evidence, here is a brief summary of what the plaintiff [s] intend [s] to prove:

1.;

2.; and

3..

The defendant [s] [deny] [denies] the plaintiff [s'] ['s] claim [s], and intend to prove:

1.; and

2..

This is only a preliminary outline of the case. At the end of the trial, I will give you more detailed written instructions concerning the plaintiff [s'] ['s] claim [s] and the defendant [s'] ['s] defense [s]. You should use those final instructions, and not this summary, to decide the case.

PRELIMINARY INSTRUCTION NO. 4
DUTY OF JURORS

Your duty as jurors is to listen to the evidence, decide the facts, and then apply the facts to the law as stated in my instructions. You alone are the judges of the facts, but you must follow the law as I give it to you, even if you disagree with the law or do not like it.

Do not allow sympathy or prejudice to influence you in the performance of your duty as jurors. You are to reach a just verdict, unaffected by anything except for the evidence, your common sense, and the instructions.

[Unless you are instructed otherwise, you are to apply these instructions separately to each [plaintiff] [defendant] [plaintiff and defendant] in this case. [For example, if you find that one plaintiff is entitled to recover, it does not necessarily follow that [all] [both] plaintiffs are entitled to recover.] [Similarly,] [For example,] if you find that [the] [a] plaintiff is entitled to recover against one defendant, it does not necessarily follow that the plaintiff is entitled to recover against [all] [both] defendants.]]

PRELIMINARY INSTRUCTION NO. 5
LIABILITY OF CORPORATIONS

_____ [is a] [are] corporation[s]. Although a corporation often is treated under the law as if it were a person, a corporation can act only through its employees, officers, directors, and agents. Therefore, a corporation is held responsible under the law for the acts or omissions of its employees, officers, directors, and agents performed within the scope of their authority.

Employees, officers, directors, and agents of a corporation are acting "within the scope of their authority" only when they are engaged in the performance of duties expressly or impliedly assigned to them by the corporation. Unless you are instructed otherwise, a corporation is not responsible for the acts or omissions of its employees, officers, directors, or agents performed outside the scope of their authority.

All parties — including individuals, regardless of their status in society, and corporations, whether large or small — stand equal before the law, and are entitled to the same fair consideration and treatment by you.

PRELIMINARY INSTRUCTION NO. 6
ORDER OF TRIAL

The trial will proceed as follows:

After I finish reading these preliminary instructions, the lawyers may make opening statements. An opening statement is not evidence. It is simply a summary of what the lawyers expect the evidence to be.

The plaintiff [s] then will present evidence. The defendant [s] may cross-examine the plaintiff [s'] ['s] witnesses. Following the plaintiff [s'] ['s] case, the defendant [s] may present evidence. The plaintiff [s] may cross-examine the defendant [s'] ['s] witnesses. Following the defendant [s'] ['s] case, the parties may present additional evidence.

After all the evidence is concluded, I will give you further instructions. The lawyers then will make arguments summarizing and interpreting the evidence for you. As with opening statements, these arguments are not evidence. Then I will give you some final instructions on deliberations, and you will retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 7
BURDEN OF PROOF

Your verdict will depend upon whether or not you find certain facts have been proved. The obligation to prove a fact, or "the burden of proof," is upon the party whose claim depends upon that fact. The party with the burden of proving a fact must prove the fact by "the greater weight of the evidence," which is proof that the fact is more likely true than not true.

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

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 one.

PRELIMINARY INSTRUCTION NO. 8
DEFINITION OF EVIDENCE

You are to base your verdict on the law I give to you in my instructions and on the evidence placed before you during the trial. "Evidence" is:

1. Testimony in person.
2. Testimony taken and recorded before trial and then presented at trial, including depositions read into evidence and depositions recorded electronically and then replayed during the trial.
3. Exhibits admitted into evidence by the court.
4. Stipulations.
5. Any other matter admitted into evidence.

None of the following is evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.
5. Pretrial statements, reports, depositions, or other miscellaneous materials referred to during the trial but not admitted into evidence.

Evidence may be direct or circumstantial, but you should not be concerned with these terms. The law makes no distinction between the weight to be given to direct evidence and circumstantial evidence. That is for you to decide.

Do not conclude from anything I may do or say during the trial that I have any opinions about the case favoring one side or the other.

PRELIMINARY INSTRUCTION NO. 9
CREDIBILITY OF WITNESSES

You may believe all of what a witness says, part of it, or none of it. In deciding what testimony to believe, consider a witness's intelligence, memory, motives for testifying a certain way, manner while testifying, whether the witness said something different at an earlier time, the general reasonableness of the testimony, the witness's opportunity to have seen or heard the things about which the witness is testifying, and the extent to which the testimony is consistent with other evidence you believe.

Keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a witness's mis-recollection has to do with an important fact or only a small detail. You also should consider whether a witness's false or inaccurate testimony is the result of an innocent misrecollection, a lapse of memory, or an intentional falsehood.

A witness may be discredited, or "impeached," by evidence that is inconsistent with the witness's testimony. This would include evidence that at some earlier time the witness said or did something, or failed to say or do something, that is inconsistent with the witness's testimony in the trial. It is for you to decide whether or not a witness has been impeached. If you decide a witness has been impeached, and thus discredited, you may choose to disbelieve all or part of the witness's testimony. On the other hand, you may choose to believe a witness's testimony even though the witness has been impeached.

PRELIMINARY INSTRUCTION NO. 10
OPINION EVIDENCE — EXPERT WITNESS

You may hear testimony from witnesses described as experts. "Experts" are persons who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject expert testimony just like any other testimony. After considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give an expert witness's testimony whatever weight, if any, you think it deserves.

An expert witness may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to an expert witness's testimony, if a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

PRELIMINARY INSTRUCTION NO. 11
STIPULATIONS

The parties may agree to certain facts and reduce them to written or oral stipulations. You should treat stipulated facts as having been proved.

[The parties have stipulated to the following facts:]

PRELIMINARY INSTRUCTION NO. 12
ADMISSIONS

A party may have served on another party a written "request for admission," requesting the other party to admit that certain facts are true. You should treat all facts admitted under this procedure as having been proved.

You also may hear evidence of statements called "admissions," which are statements made by a party before the trial while not under oath. If you find such a statement was made, you may regard it as if it had been made under oath here in court.

PRELIMINARY INSTRUCTION NO. 13
INTERROGATORIES

During the trial, you may hear the word "interrogatory." An interrogatory is a written question one party can send to the other which the other party then must answer under oath and in writing. Consider interrogatories and the answers to them as if they were, respectively, questions asked and answered under oath here in court.

PRELIMINARY INSTRUCTION NO. 14
DEPOSITIONS

A deposition is testimony taken under oath before the trial and preserved in writing or electronically. Testimony from a deposition may be read into evidence or replayed electronically. Consider such testimony as if it had been given under oath here in court.

PRELIMINARY INSTRUCTION NO. 15
OBJECTIONS

During the trial, the lawyers may make objections. You should not hold it against the lawyers or their clients when they do this. A lawyer has a duty to object when a party offers testimony or other evidence the lawyer believes is not properly admissible. If I sustain an objection to a question, you should not pay any attention to the question itself. Also, when I rule or comment on an objection or motion, you should not think I have any opinions about the case, favoring one side or the other.

PRELIMINARY INSTRUCTION NO. 16
BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here, while you are 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 to decide how certain evidence is to be treated under the rules of evidence, and to avoid wasting your time. We will do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 17
NOTE TAKING

You may take notes during the trial if you wish. After the attorneys' opening statements, the Court Security Officer will give you note pads and pens for this purpose.

If you choose to take notes, be sure it does not interfere with your ability to listen to the evidence. It is the responsibility of all jurors to listen carefully to the evidence. You cannot give this responsibility to another juror who may be taking notes. We depend on *all* members of the jury to remember and consider the evidence. Do not discuss your notes with anyone until you begin your deliberations.

A juror's notes are not evidence. They are no more reliable than the memory of a juror who chooses to listen carefully to the evidence without taking notes.

Do not take your notes with you when you leave the courtroom. Leave them on your chair in the courtroom, and the Court Security Officer will safeguard them for you. Your notes will remain confidential throughout the trial, and will be destroyed when the trial is over.

You will notice that we have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the record available for your use in reaching your decision.

PRELIMINARY INSTRUCTION NO. 18
ADMONITION

You will not be required to remain together while court is in recess. However, to ensure fairness, you must obey the following rules:

First, do not talk among yourselves about this case until you go to the jury room at the end of the case to decide on your verdict.

Second, do not talk with anyone else about the case until the trial is over and your verdict has been accepted by me. If you overhear someone talking about the case or if someone tries to talk to you about the case, report it to me immediately.

Third, during the trial, you should not talk with any of the lawyers, parties, or witnesses about anything – you should not even pass the time of day with them. This is because it is important not only that you do justice in this case, but also that you give the appearance of doing justice. If a person from one side of the lawsuit sees you talking with a person from the other side – even if it is simply to pass the time of day – a suspicion about your fairness might arise. When a lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, they are not being discourteous; they are only following the rules. They are not supposed to talk with you.

Fourth, do not read any news stories or articles or listen to any radio or television reports about the case.

Fifth, do not do any research or make any investigation into the case on your own.

Sixth, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

FINAL INSTRUCTION NO. 1

INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and any oral instructions I gave you during the trial remain in effect. I now give you some additional instructions. These final instructions are no more important than the preliminary ones, nor are written instructions more important than oral ones. You must follow *all* of my instructions, whenever given and whether in writing or not.

In considering these instructions, the order in which they are given is not important.

FINAL INSTRUCTION NO. 2

FINAL INSTRUCTION NO. 3

FINAL INSTRUCTION NO. X

(ACTUAL) DAMAGES

If you find in favor of [the] [a] plaintiff, then you must award [the] [that] plaintiff the amount you find by the greater weight of the evidence will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a direct result of [describe claim]. [The plaintiff's] [_____'s] claim for damages includes _____ distinct types of damages, which you must consider separately.

[LIST ELEMENTS OF DAMAGES, for example]

First, you must determine the amount of any emotional distress damages sustained by the plaintiff in the past as a result of the defendant ['s] [s'] wrongful actions.

> Emotional distress may include, but is not limited to, mental anguish, nervousness, worry, irritability, disappointment, depression, confusion, apprehension, embarrassment, and a feeling of uselessness or loss of enjoyment of life.

Second, you must determine the amount of any emotional distress damages the plaintiff will sustain in the future as a result of the defendant ['s] [s'] wrongful actions.

Third, you must determine the reasonable value of the medical care and supplies needed by and actually provided to the plaintiff in the past.

Fourth, you must determine the reasonable value of the medical care and supplies reasonably certain to be needed and provided to the plaintiff in the future.

Fifth, you must determine the amount of any wages and fringe benefits the plaintiff would have earned in his employment with the defendant from the time the plaintiff claims [s]he was constructively discharged through the date of your verdict, minus the amount of earnings and benefits that the plaintiff received from other employment during that time. This is called "back pay."

Sixth, _____

You must enter separate amounts in the verdict form for each category of damages, and you must not include the same item of damage in more than one category.

FINAL INSTRUCTION NO. Y

CALCULATING DAMAGES

[You do not have to determine damages by any exact or mathematical standard, but you should not use guesswork or speculation. Instead, you should use your sound judgment, based upon an impartial consideration of the evidence. You should not act arbitrarily or out of sympathy or prejudice toward a party.]

[[The plaintiff] had a duty under the law to "mitigate" damages – that is, to exercise reasonable diligence under the circumstances to minimize damages. If you find by the greater weight of the evidence that [the plaintiff] failed to seek out or take advantage of an opportunity that was reasonably available to [the plaintiff] [him] [her] to mitigate damages, you must reduce [the plaintiff's] [his] [her] damages by the amount of damages [the plaintiff] [he] [she] reasonably could have avoided if [the plaintiff] [he] [she] had sought out or taken advantage of such an opportunity.]

[In arriving at an item of damage, you cannot establish a figure by taking down the estimate of each juror as to that item of damage and agreeing in advance that the average of those estimates will be your award of damage for that item.]

[Future economic damages must be reduced to present value. "Present value" is a sum of money paid now that, together with interest earned at a reasonable rate of return, would compensate the plaintiff for future economic losses. Non-economic damages, such as emotional distress damages, should not be reduced to present value.]

[In awarding damages to any party, do not consider interest or attorneys' fees. The court will address all such issues in separate proceedings.]

Though I have instructed you on the proper measure of damages, you should not consider that as an indication of my view as to which party is entitled to your verdict in this case. I have instructed you as to the measure of damages only for your guidance in case you find [[the] [a] plaintiff] [a party] is entitled to damages.

FINAL INSTRUCTION NO. Z

DELIBERATIONS

In conducting your deliberations and returning your verdict, you must follow these rules:

First, when you go to the jury room, you must select a foreperson to preside over your discussions and to speak for you here in court.

Second, it is your duty, as jurors, to discuss the case with each other in the jury room. You should try to reach agreement, if you can do so without doing violence to your individual judgment. Do not be afraid 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 simply to reach a verdict. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed the case fully with your fellow jurors, and listened to their views. Remember, you are not partisans, but judges – judges of the facts. Your only interest in this case is to seek the truth from the evidence.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. If you are brought into open court, you should not tell anyone – including me – how your vote stands numerically, unless I specifically ask you for this information.

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

Fifth, **your verdict must be unanimous.**

Finally, I am giving you a verdict form. A verdict form is written notice of a decision by a jury. You should take this form with you to the jury room, and when you agree on a verdict, your foreperson is to fill in the form and date it, and all jurors are to sign it. The foreperson then should advise the Court Security Officer that you are ready to return to the courtroom.

DATED this _____ day of _____, 20____.

_____
PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT