OPENING INSTRUCTIONS

# Instruction No. \_\_\_\_

Now that you have been sworn, I have the following preliminary instructions for your guidance as jurors in this case.

You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give to you.

You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. I make whatever legal decisions have to be made during the course of the trial, and I will explain to you the legal principles that must guide you in your decisions. You must follow that law whether you agree with it or not.

# INSTRUCTION NO. \_\_\_\_

[Summarize the parties’ respective contentions from the joint statement of the case due with draft jury instructions.]

# Instruction No. \_\_\_\_

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements that the Plaintiff must prove to make the Plaintiff’s case:

[Summarize elements of the applicable cause of action].

# Instruction No. \_\_\_\_

This is a civil case. The Plaintiff is the party who brought this lawsuit. The Defendant is the party against whom the lawsuit was filed. The Plaintiff has the burden of proving the case by what is called the preponderance of the evidence. That means the Plaintiff has to prove to you, in light of all the evidence, that what the Plaintiff claims is more likely so than not so. To say it differently: if you were to put the evidence favorable to the Plaintiff and the evidence favorable to the Defendant on opposite sides of the scales, the Plaintiff would have to make the scales tip somewhat on the Plaintiff’s side. If the Plaintiff fails to meet this burden, the verdict must be for the Defendant.

If you find after considering all the evidence that a claim or fact is more likely so than not so, then the claim or fact has been proved by a preponderance of the evidence.

In determining whether any fact has been proved by a preponderance of evidence in the case, you may, unless otherwise instructed, 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.

[On certain issues, called affirmative defenses, the Defendant has the burden of proving the elements of the defense by a preponderance of the evidence. I will instruct you on the facts that will be necessary for you to find on this affirmative defense. An affirmative defense is proven if you find, after considering all evidence in the case, that the Defendant has succeeded in proving that the required facts are more likely so than not so.]

[The Defendant has also brought claims for relief against the Plaintiff, called counterclaims. On these claims, the Defendant has the same burden of proof as has the Plaintiff on the Plaintiff’s claims.]

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard of proof, and it applies only to criminal cases. It does not apply in civil cases such as this, so you should put it out of your mind.

# Instruction No. \_\_\_\_

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end.

I know that many of you use cell phones, the internet, and other tools of technology. You must not use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, text messaging, or Twitter, or through any blog or website, including Facebook, Messenger, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror’s violation of these instructions.

If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you.

Do not read or listen to anything related to this case that is not admitted into evidence. By that I mean, if there is a newspaper article or radio or television report relating to this case, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation or do any research on the internet on your own on matters relating to the case or this type of case, including research on any of the people or attorneys in this case. There are good reasons for prohibiting independent research. Relying on the internet, social media, or reports doesn’t allow any party to explain, rebut, or even know about this information. Also, such information is not under oath or in a setting where you can judge its credibility, basis, or reliability, nor is it subject to cross-examination.

Again, do not reach any conclusion on the claims or defenses until all of the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

# Instruction No. \_\_\_\_

During the trial it may be necessary for me to talk with the lawyers out of your hearing by having a sidebar bench conference. If that happens, please be patient.

We are not trying to keep important information from you. These conferences are necessary for me to fulfill my responsibility, which is to be sure that evidence is presented to you correctly under the law.

We will, of course, 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.

# Instruction No. \_\_\_\_

The evidence in this case includes only what the witnesses say while they are testifying under oath, the exhibits that I allow into evidence, the stipulations that the lawyers agree to, and the facts I judicially notice.

Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

# Instruction No. \_\_\_\_

There are two types of evidence that you may use in reaching your verdict. One type of evidence is called “direct evidence.” An example of “direct evidence” is when a witness testifies about something that the witness knows through his own senses – something the witness has seen, felt, touched or heard or done. If a witness testified that the witness saw it raining outside, and you believed the witness, that would be direct evidence that it was raining. Another form of direct evidence is an exhibit where the fact to be proved is its existence or current condition.

The other type of evidence is circumstantial evidence. “Circumstantial evidence” is proof of one or more facts from which you could find another fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You should consider both kinds of evidence that are presented to you. The law makes no distinction in the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

# Instruction No. \_\_\_\_

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness’s intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness’s ability to observe the matters as to which he has testified, and whether the witness impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent mis-recollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a large number of witnesses to the contrary.

# Instruction No. \_\_\_\_

Try not to be swayed by the appearance of the witness’s clothing, hairstyle, or grooming. Guard against the natural tendency to believe people whose appearance is similar to your own dress and grooming. Also be on guard against being influenced by how attractive the witness may be. Beware of an inclination to be more sympathetic to a witness who is appealing in his or her appearance. These factors are often unrelated to a witness’s truthfulness. Mannerisms can also be misleading. Sometimes a truthful witness may seem to be nervous or tense. Such a witness may be intimidated by the courtroom, and some witnesses are typically nervous, fidgety or tense in their manner.

Evaluate not just what the witness says, but how the witness says it. Pay attention to facial expression, gesture, posture, and tone of voice. Look for discrepancies between what the witness says and how the witness says it. But remember that sometimes truthful witnesses may look worried because they are afraid of being disbelieved and that some liars can behave convincingly.

# Instruction No. \_\_\_\_

Testimony may be presented to you from a deposition. A deposition is testimony taken under oath before the trial, in the presence of a court reporter, and preserved. You must consider the testimony as though the witnesses giving the testimony were present and testifying before you.

# Instruction No. \_\_\_\_

In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training, or education, may testify as what we call an expert and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

# Instruction No. \_\_\_\_

A layperson may also give an opinion in his or her testimony. You should determine the weight to give to a lay opinion based on the witness’s credibility, the extent of the witness’s opportunity to perceive the matters upon which the opinion is based, and the reasons, if any given for it. Just as with experts, you may disregard any lay opinion if you find it to be unreasonable or not adequately supported.

# Instruction No. \_\_\_\_

During the course of the trial, I may ask a question of a witness. If I do, that does not indicate I have any opinion about the facts in the case but am only trying to bring out facts that you may consider.

# Instruction No. \_\_\_\_

***[OPTION #1]***

Only the lawyers and I are allowed to ask questions of witnesses. You are not permitted to ask questions of witnesses.

***[OPTION #2]***

You will have the opportunity to ask the witnesses written questions. When a witness has been examined and cross-examined by counsel, and after I ask any clarifying questions of the witness, I will ask whether any juror has any further clarifying question for the witness.

If so, you will write your question on a piece of paper, and hand it to my Deputy Clerk. Do not discuss your question with any other juror. I will review your question with counsel at sidebar and determine whether the question is appropriate under the rules of evidence. If so, I will ask your question, though I might put it in my own words. If the question is not permitted by the rules of evidence, it will not be asked, and you should not draw any conclusions about the fact that your question was not asked. Following your questions, if any, the attorneys may ask additional questions. If I do ask your question, you should not give the answer to it any greater weight than you would give to any other testimony.

# Instruction No. \_\_\_\_

The Court will permit jurors to take notes during the evidence, the summations of the attorneys at the conclusion of the evidence, and during my instructions to you on the law. However, I’d ask you to observe the following limitations:

Note-taking is permitted, not required. Please don’t give any more or less weight to a juror who chooses not to take notes.

Please take notes sparingly. Notes are for the purpose of refreshing memory only, not to summarize the testimony. Overindulgence in note-taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in judging credibility. Don’t let note-taking distract you from this task.

Your notes are for your own private use only. Do not use your notes, or any other juror’s notes, as authority to persuade fellow jurors. Remember, notes are personal memory aids only, and notes, just like observations, can be mistaken.

Finally, do not take your notes away from court. When you are not in court, you may keep your notes in the jury room where they will be safe and available. At the conclusion of the case, after all deliberations, a court officer will collect and destroy your notes to protect the secrecy of your deliberations.

# Instruction No. \_\_\_\_

The trial will proceed in the following manner:

First, the Plaintiff’s attorney will make an opening statement to you. Next, the Defendant’s attorney may make an opening statement or may reserve opening statement until the close of the Plaintiff’s case. What is said in the opening statements is not evidence but is simply an outline to help you understand what each side is arguing.

Next is the presentation of evidence. The Plaintiff goes first because the Plaintiff has the burden of proof. The Plaintiff will present witnesses whom counsel for the Defendant may cross-examine, and the Plaintiff may also present evidence. Following the Plaintiff’s case, the Defendant may present evidence and witnesses. Counsel for the Plaintiff may cross-examine witnesses for the defense.

After all the evidence has been presented, I will instruct you on the law, and then the attorneys will present their closing arguments to summarize and interpret the evidence in a way that is helpful to their clients’ positions. As with opening statements, closing arguments are not evidence. After closing arguments, you will retire to the jury room to deliberate on your verdict in this case.

EVIDENTIARY INSTRUCTIONS

# Instruction No. \_\_\_\_

MEMBERS OF THE JURY:

Now that you have heard the evidence, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions of the Court, just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You are to disregard any evidence offered at trial and rejected by the Court. You are not to consider the opening statements and the arguments of counsel as evidence. Their purpose is merely to assist you in analyzing and considering the evidence presented at trial. The lawyers may properly refer to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

# Instruction No. \_\_\_\_

During this trial I have permitted you to take notes. Many courts do not permit note-taking by jurors and a word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory, and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

# Instruction No. \_\_\_\_\_

This case should be considered and decided by you as an action between parties 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 at your hands as a private individual. All persons, including corporations, partnerships, unincorporated associations, and other organizations, stand equal before the law and are to be dealt with as equals in a court of justice.

# Instruction No. \_\_\_\_\_

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. However, such charts or summaries are not in and of themselves evidence or proof of any facts. If such charts or summaries do not correctly reflect facts or figures shown by the evidence in the case, you should disregard them.

In other words, such charts or summaries are used only as a matter of convenience; so if, and to the extent, you find they are not the true summaries of facts or figures shown by the evidence in the case, you are to disregard them entirely.

# Instruction No. \_\_\_\_

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

# Instruction No. \_\_\_\_

If you find that the Plaintiff has proved any of the Plaintiff’s claims against the Defendant, then you must determine what amount of damages, if any, the Plaintiff is entitled to recover.

If you find that the Plaintiff has failed to prove any of the Plaintiff’s claims, then you will not consider the question of damages.

# Instruction No. \_\_\_\_

If you find that the Defendant is liable to the Plaintiff, then you must determine an amount that is fair compensation for all of the Plaintiff’s damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the Plaintiff whole, that is, to compensate the Plaintiff for the damages that the Plaintiff has suffered. Compensatory damages are not limited to expenses that the Plaintiff may have incurred because of injury. If the Plaintiff wins, then the Plaintiff is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that the Plaintiff has suffered because of the Defendant’s conduct.

The claimed elements of damage are:

[list damages]

You may award compensatory damages only for injuries that the Plaintiff proves were proximately caused by the Defendant’s wrongful conduct. The damages that you award must be fair compensation for all of the Plaintiff’s damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant. You should not award compensatory damages for speculative injuries but only for those injuries which the Plaintiff has actually suffered or that the Plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the Plaintiff prove the amount of the Plaintiff’s losses with mathematical precision but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

# Instruction No. \_\_\_\_

There is no formula the Court can give you for the determination of damages for pain and suffering, emotional distress, loss of enjoyment of life, disability, disfigurement or any future damages as may be reasonably probable to arise. It is not necessary that any witness shall have expressed any opinion as to the dollar amount of these damages. Your award, if any, should be such sum as will fairly and adequately compensate the Plaintiff. The amount awarded, if any, rests within your sound discretion and is for you to determine, taking into consideration the evidence in this case and from your knowledge, observation, and experience in life. Your award, if any, should be for what damages are reasonable and just.

# Instruction No. \_\_\_\_\_

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate, or to avoid or minimize, those damages.

If you find the Defendant is liable and the Plaintiff has suffered damages, the Plaintiff may not recover for any item of damage which he could have avoided through reasonable effort. If you find by a preponderance of the evidence the Plaintiff unreasonably failed to take advantage of an opportunity to lessen damages, you should deny recovery for those damages which the Plaintiff would have avoided had the Plaintiff taken advantage of the opportunity.

You are the sole judges of whether the Plaintiff acted reasonably in avoiding or minimizing damages. An injured Plaintiff may not sit idly by when presented with an opportunity to reduce damages. However, the Plaintiff is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The Defendant has the burden of proving the damages which the Plaintiff could have mitigated. In deciding whether to reduce the Plaintiff’s damages because of a failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the Defendant has satisfied the burden of proving that the Plaintiff’s conduct was not reasonable.

# Instruction No. \_\_\_\_

In the event you find that the Plaintiff is entitled to damages arising in the future, you may consider how long the Plaintiff is likely to live.

The age of the Plaintiff at the time of the injury was \_\_\_ years. The average life expectancy of a person aged \_\_\_ years is \_\_\_ years. This figure is not conclusive. You may consider this in connection with other evidence relating to the probable life expectancy of the Plaintiff, including evidence of the Plaintiff’s occupation, health, habits, and activities, bearing in mind that some persons live longer and that some persons live less than the average.

# Instruction No. \_\_\_\_

In determining damages for medical expenses and loss of earnings which will be incurred in the future, you must determine the present worth in dollars of such future damages.

A lump sum of money received today is worth more than the same sum paid in installments over a period of months or years because a sum received today can be invested and earn money at current interest rates. By making a reduction for the earning power of money, your answer will reflect the present value in dollars of an award of future damages.

In computing the amount of future damages, you may take into account economic conditions, present and future, and the effects of inflation.

# Instruction No. \_\_\_\_

If you can reasonably apportion damages between those existing before this occurrence and those resulting from this occurrence, then you should award only those damages caused by this occurrence. This includes any increased harm or disability suffered by the Plaintiff because of an aggravation to a pre-existing condition. However, this does not include any harm or disability that existed prior to this occurrence.

You do not need to have specific evidence setting forth an exact percentage to apportion damages. You are to make the best and most sensible apportionment you can if you find that the evidence as a whole is sufficient to allow you to make a reasonable apportionment.

If you cannot reasonably apportion damages between this occurrence and the preexisting condition, then you should award all damages incurred since this occurrence, including those for the pre-existing condition.

CLOSING INSTRUCTION

# Instruction No. \_\_\_\_

Upon retiring to your jury room to begin your deliberation, you must elect one of your members to act as your presiding juror. The presiding juror, sometimes called the foreperson, will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view toward reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are the “judges” of the facts of this case. Your sole interest is to seek the truth from the evidence received during trial.

Your verdict must be based solely upon the evidence received in this case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you many times, you are the sole judges of the facts.

The Court has prepared a verdict form for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your presiding juror fill in, date, and sign the form upon which you have unanimously agreed. When you have reached unanimous agreement as to your verdict, the presiding juror shall inform the bailiff and you shall return to the courtroom.

If it becomes necessary during your deliberations to communicate to the Court, you may send a note, signed by the presiding juror or by one or more members of the jury, through the bailiff. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury concerning the evidence, your opinions, or the deliberations other than in writing or orally here in open court.

You will note from the oath about to be taken by the bailiff that the bailiff, too, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.