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| **THE UNITED STATES DISTRICT COURT**  **DISTRICT OF UTAH** | |
| **,**  **Plaintiff(s),**  **v.**  **,**  **Defendant(s).** | **JURY INSTRUCTIONS**  **Case No.**  **Magistrate Judge Jared C. Bennett** |

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| **THE UNITED STATES DISTRICT COURT**  **DISTRICT OF UTAH** | |
| **,**  **Plaintiff(s),**  **v.**  **,**  **Defendant(s).** | **PRELIMINARY JURY INSTRUCTIONS**  **Case No.**  **Magistrate Judge Jared C. Bennett** |

INSTRUCTION NO.

MEMBERS OF THE JURY:

I will now read some preliminary instructions about the process we will follow. At the end of the trial, I will provide more instructions about the law that governs the issues. During the trial you should focus your attention on the facts of this case, as shown by the evidence presented.

It will be your duty to find the facts from the evidence presented in court. You will then have to apply the law whether you agree with it or not.

Nothing I may say or do during the course of the trial is intended to indicate that I have any opinion about the facts of the case nor should anything I say or do be taken as indicating what your verdict should be.

Each juror must seek the truth from the evidence presented, so that the jury may render a just verdict.

INSTRUCTION NO.

This is a civil case. The plaintiff has the burden of proving the plaintiff’s case by what is called a preponderance of the evidence. That means the plaintiff has to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff claims is more likely true than not. To put it differently, if you were to put plaintiff’s and defendant’s evidence 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.

Those of you who have seen or participated in criminal trials will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case and you should therefore put it out of your mind.

INSTRUCTION NO.

The evidence from which you will find the facts will consist of the sworn testimony of witnesses, documents and other things received as exhibits, and any facts the lawyers agree or stipulate to, or that I may instruct you to find.

In your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw reasonable inferences from the facts which you find have been proven. An inference is a deduction or conclusion which reason and common sense would lead you to draw from facts which are established by the evidence.

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. However, when the attorneys stipulate to the existence of a fact, you must accept the stipulated fact as being proven.

2. Objections to questions are not evidence. Lawyers have an obligation to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by an objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other.

3. Testimony that I have excluded or told you to disregard is not evidence and must not be considered.

4. If you are instructed that testimony or evidence is received for a limited purpose, it may only be considered for that purpose.

5. 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.

You are the exclusive judges of the credibility of the witnesses and the weight of the testimony and evidence. In judging the weight of the testimony and the credibility of the witnesses you may take into consideration: their bias; their interest in the result of the case; their relationship to any of the parties; any probable motive or lack thereof to testify fairly; their demeanor on the witness stand; the reasonableness of their testimony; their frankness or candor, or the lack of; their opportunity to know; their ability to understand; their capacity to remember; and the extent to which their testimony has been either supported or contradicted by other credible evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently and innocent misrecollection, 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 believe or disbelieve all or any part of any witness’s testimony.

INSTRUCTION NO. (IF APPLICABLE)

You may hear the testimony of an expert witness. This term denotes a witness who, by education and experience, has become expert in some art, science, profession, or calling, and may state opinions as to matters in which the witness is an expert, and may also state the reasons for the opinion.

You are not bound, however, by such an opinion. You should judge expert opinion testimony just as you judge any other testimony.

INSTRUCTION NO. (IF APPLICABLE)

The plaintiff and the defendant have stipulated – that is they have agreed – to certain facts. You must therefore treat those facts as conclusively proven. I will now read the stipulated facts:

INSTRUCTION NO.

At the end of trial, you must make your decision based on what you recall of the evidence and the exhibits received into evidence. You will not have a transcript of the trial. You will have the exhibits which are received into evidence. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO.

You will be permitted to take notes during this trial. But if you do, leave them in the jury room when you leave at night, and remember that they are for your own personal use.

You, of course, are not obligated to take notes. If you do not take notes, you should not be influenced by the notes of another juror, but rely upon your own recollection of the evidence.

Note-taking must not be allowed to interfere with the ongoing nature of the trial or distract you from what happens here in court. Any notes taken by any juror concerning this case should not be disclosed to anyone other than a fellow juror and at no other time than during deliberation.

INSTRUCTION NO.

During the trial it may be necessary for me to discuss legal matters 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 do not speculate as to what we are discussing or why we are having these discussions.

INSTRUCTION NO.

Next, a few words about your conduct as jurors. These instructions may seem odd, but they are critically important, because if you violate these rules the trial may be invalid. We do not want to get a verdict and then find out later that one of you considered information from outside the courtroom.

First, until this trial is over, you may not discuss the case or the evidence with anyone, even fellow jurors.

Second, if anyone should try to talk to you about the subject of this case, bring it to the attention of the jury administrator promptly.

Third, do not read or listen to anything touching on this case in any way. Do not watch or listen to any news reports concerning this trial on television or on the radio, and do not read any news accounts of this trial in a newspaper, on the internet, or on any instant communication device or service, including smartphones, email, texts, Facebook, Twitter, and other devices and services.

Fourth, do not try to do any research or make any investigation about the case on your own. This means you must not consult any person or source, including internet resources, on subjects related to this case.

Fifth, when you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

Sixth, to avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if your conversation with them has nothing to do with the case. The lawyers and parties have been given the same instruction about not speaking with you, so do not think they are being unfriendly to you.

Seventh, do not form any opinion until all the evidence is presented. Keep an open mind until you start your deliberations at the end of the case after you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law.

Finally, your smartphones, email, texts, Facebook, Twitter, and other devices and services should not be used in any way with regard to this case.

After the trial is over and I have released you from the jury, you may then discuss the case with anyone, but you are not required to do so. I will give you more instructions about this when you have returned your verdict.

Again, we want to avoid the case where a juror did some internet research and thought that Google Street View showed that an intersection looked differently than the photos in court – and that research voided the verdict. Please follow these rules during the trial.

INSTRUCTION NO.

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the plaintiff will call witnesses and defendant may cross-examine them. Then the defendant will call witnesses and the plaintiff may cross-examine them.

After all the evidence is in, I will give you instructions on the law, after which the attorneys will make their closing arguments to summarize and interpret the evidence for you.

You will then retire to deliberate on your verdict.

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| **THE UNITED STATES DISTRICT COURT**  **DISTRICT OF UTAH** | |
| **,**  **Plaintiff(s),**  **v.**  **,**  **Defendant(s).** | **FINAL JURY INSTRUCTIONS**  **Case No.**  **Magistrate Judge Jared C. Bennett** |

INSTRUCTION NO.

MEMBERS OF THE JURY:

Now that you have heard the evidence, it is my duty to give you instructions as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in these instructions, and to apply the law to the facts as you find them from the evidence.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

You are not to be concerned with the wisdom of any rule of law stated by these instructions.

INSTRUCTION NO.

You are to perform your duty as jurors without sympathy, bias, or prejudice as to any party.

It would be improper for you to consider any personal feelings you may have about one of the parties' race, religion, national origin, gender, orientation, or age.

It would be equally improper for you to allow any feelings you might have about the nature of the claim asserted to influence you in any way.

The parties are entitled to a trial free from prejudice.

[IF APPLICABLE:]

Defendant is a corporation. A corporation is entitled to the same treatment as a private individual. You must consider and decide this case as a case between persons of equal rights, equal worth, and equal standing. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

INSTRUCTION NO.

Plaintiff has the burden of proving the plaintiff’s claims by a preponderance of the evidence.

To prove by a preponderance of the evidence means to prove something is more likely than not. It does not mean the greater number of witnesses or exhibits. It means the evidence that has the more convincing force when taken on the whole compared to the evidence opposed to it. It means the evidence that leads you, the jury, to find that the existence of a fact is more likely true than not true.

Any finding of fact you make must be based on probabilities, not possibilities. A finding of fact must not be based on speculation or conjecture.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression “if you find” or “if you determine,” I mean that you must be persuaded, considering all the evidence, that the proposition is more probably true than not true.

In determining whether any disputed fact has been proven by a preponderance of the evidence you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits.

If a party fails to meet its burden of proof, or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must resolve the question against the party who has the burden of proof on that issue and in favor of the opposing party.

INSTRUCTION NO.

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against any attorney or the attorney’s client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of any attorney, I do not indicate any opinion as to the weight or effect of any such evidence. You the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When I have sustained an objection to a question addressed to a witness, you must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have said if the witness had been permitted to answer the question.

INSTRUCTION NO.

During the course of the trial, I may have occasionally asked questions of a witness in order to bring out facts not then fully covered in the witness’s testimony. Do not assume that I hold any opinion on the matters to which my questions may have related.

INSTRUCTION NO.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence.

INSTRUCTION NO.

[SUBSTANTIVE INSTRUCTIONS]

INSTRUCTION NO.

The fact that I have instructed you on damages does not mean that I am indicating that you should award any – that is entirely for you, the Jury, to decide.

The plaintiff bears the burden of proving by a preponderance of the evidence that the plaintiff not only suffered damages but the amount of damages as well.

When you deliberate, do not flip a coin, speculate or choose one juror’s opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

If you decide the plaintiff is entitled to recover damages, you must then agree upon the amount of damages to award. Each of you should state your own independent judgment on what that amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree in advance to average the estimates.

INSTRUCTION NO.

Damages must be reasonable. You are not permitted to award speculative damages, which means compensation for a detriment which, although possible, is remote, or conjectural.

Damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries, but only for those injuries the plaintiff has actually suffered or which the plaintiff is reasonably likely to suffer in the near future.

In awarding compensatory damages, you must 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 the plaintiff to prove the amount of the plaintiff’s losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

INSTRUCTION NO.

You may not include in any award to the plaintiff, any sum for the purpose of punishing the defendant, or to make an example of the defendant for the public good or to prevent other incidents. [Use only if punitive damages are not sought]

INSTRUCTION NO.

If any reference by me or by the attorneys to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

INSTRUCTION NO.

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

The 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 must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to 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 with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors for the purpose of returning a unanimous verdict.

Remember at all times, you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence.

Your verdict must be based solely upon the evidence received. 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.

A verdict form has been prepared for you. Your answers to the interrogatories on the verdict form must be consistent with the instructions I have given you and with each other.

When you have reached a unanimous agreement as to your verdict, your foreperson will fill in, date and sign the verdict form upon which you have unanimously agreed. When you have reached unanimous agreement as to your verdict, the foreperson shall inform the court security officer and you shall return to the courtroom with the verdict form.

INSTRUCTION NO.

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and the juror may hesitate to recede from an announced position if shown that it is wrong.

If it becomes necessary during your deliberations to communicate with me, you may send a note by the court security officer signed by your foreperson, or by one or more members of the jury. No member of the jury should attempt to communicate with me, or any other member of the court’s staff, by any means other than a signed writing, and I, and other members of the court’s staff, will never communicate with any member of the jury on any subject touching the merits of the case, other than in writing or orally here in open court.

But bear in mind that you are not to reveal to me or to any person how the jury stands, numerically or otherwise, on the question before you, until after you have reached a unanimous agreement.

You will note from the oath about to be taken by the court security officer that the officer, 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.

INSTRUCTION NO.

During your deliberations, you are able as a group to set your own schedule for deliberations. You may deliberate as late as you wish or recess at an appropriate time set by yourselves. You may set your own schedule for lunch and dinner breaks.

However, I do ask that you notify me by a note when you plan to recess for the evening and when you intend to reconvene in the morning.

INSTRUCTION NO.

These original instructions will accompany you to the jury room. Do not write on the original instructions. Write only on the original verdict form. Do not concern yourselves with the numbering of the instructions, their sequence, or any gap in numbering. Instructions are numbered only for clerical convenience while the instructions are prepared.

**POST-VERDICT INSTRUCTION**

Your duty as jurors is complete. You are discharged from service. Thank you for your service. You have been extraordinarily diligent. Your attention, timeliness, and dedication are appreciated by all the parties, attorneys, court staff, and public. You are now relieved of the instructions I have given you not to talk or read or research about the case. You may do so if you choose.

Just so you know, your notes and jury instruction copies must be left in the jury room to be destroyed.

[I have issued an Order Regarding Juror Contact which imposes limitations on contact and on statements you may make. Please review that order carefully.]

You may be contacted by parties to the case, or their attorneys, or media representatives. You are under no obligation to speak to any of them. The court does not provide your contact information, but we will accept mail directed to you and forward it from the jury office.

Consider carefully your obligation to and the feelings of your fellow jurors before speaking with anyone about your service here. Because of the special relationship of jurors to each other, I strongly recommend you never disclose the vote, discussions, or inclinations of a fellow juror. You may of course discuss your own feelings or reactions to evidence presented or your reaction to jury service.

The United States Supreme Court has stated that “full and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict, and the community’s trust in a system that relies on the decisions of lay people would all be undermined by a barrage of post-verdict scrutiny of juror conduct.”[[1]](#footnote-1)

The rules of evidence provide that the only legitimate inquiry of jurors is “whether: (A) extraneous prejudicial information was improperly brought to the jury’s attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.”[[2]](#footnote-2) And in that instance, the verdict may be defective. Nothing else about the jury discussion or deliberation would be admissible in court.

I have instructed you to make your decision only on the basis of the evidence presented in court and to ignore outside information or influence. So, as long as you kept your oath to consider only the evidence in this case, there is no reason to speak with anyone about your service here as a juror.

Again, thank you very much for your service.

1. *Tanner v.* *United States*, 107 S.Ct. 2739, 2748 (1989) *(citing*96 Harv. L. Rev. at 888-892). [↑](#footnote-ref-1)
2. Fed. R. Evid. 606(b)(2). [↑](#footnote-ref-2)