**FINAL INSTRUCTIONS**

**Table of Contents**

**General Instructions**

Closing Roadmap 1

Juror Duties 2

No Bias or Prejudice Against Any Party 3

Multiple Parties 4

Source of Law 5

Closing Arguments 6

Legal Rulings 7

Judicial Neutrality 8

Objections by Counsel 9

Preponderance of the Evidence 10

Clear and Convincing Evidence 11

Evidence—Closing 12

“Evidence” Defined 13

Direct and Circumstantial Evidence 14

Limited Purpose Evidence 15

Witness Credibility 16

Inconsistent Statements 17

Deposition Testimony 18

Statement of Opinion 19

Habit—Routine Practice 20

Recollection of Jurors Controls 21

**Substantive Instructions**

Introduction to Substantive Law 22

“Cause” Defined 23

Agency 24

Plaintiffs’ Claims 25

[INSERT SUBSTANTIVE INSTRUCTIONS] 26

**Damages**

Introduction to Damages 27

Proof of Damages 28

Economic Damages 29

Non-Economic Damages Defined 30

Mitigation of Damages 31

Collateral Source Payments 32

Arguments of Counsel Not Evidence of Damages 33

Punitive Damages—Introduction 34

**Special Verdict Form**

Special Verdict Form 35

**Post-Argument Instructions**

Jury Deliberations—Overview 1

Commencement of Deliberations 2

Jury Deliberations 3

Do Not Speculate or Resort to Chance 4

Communications with the Court During Deliberations 5

Schedule for Deliberations 6

**INSTRUCTION NO. 1**

Closing Roadmap

MEMBERS OF THE JURY:

You now have all of the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. The Plaintiffs will go first, then the Defendants. Because the Plaintiffs have the burden of proof, the Plaintiffs may give a rebuttal.

Finally, you will go to the jury room to discuss and decide the case.

**INSTRUCTION NO. 2**

Juror Duties

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I give you in these instructions, apply it to the facts, and decide if the Plaintiffs have met the burden of proof on their claims.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

**INSTRUCTION NO. 3**

No Bias or Prejudice Against Any Party

You have been chosen as jurors in this case to try the issues of fact presented by the allegations of the parties. It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You are to perform this duty without bias or prejudice as to any party. You must not be influenced by any personal likes or dislikes, opinions, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case. The Defendants and the Plaintiffs expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

**INSTRUCTION NO. 4**

Multiple Parties

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

Although there are multiple plaintiffs, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. Each defendant is entitled to a fair consideration of its defenses against each plaintiff, just as each plaintiff is entitled to a fair consideration of its claims against each defendant.

Although there are multiple defendants, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of its defenses against each of the plaintiffs’ claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

**INSTRUCTION NO. 5**

Source of Law

You are to look to these instructions as the sole source of the law that applies in this case. Some evidence may have included references to statutes or other statements of the law. In the event of any inconsistency between such statements and these instructions, these instructions control.

**INSTRUCTION NO. 6**

Closing Arguments

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

**INSTRUCTION NO. 7**

Legal Rulings

During the trial, I have made certain legal rulings. I made those rulings based on the law, and not because I favor one side or the other. However, if I sustained an objection, if I did not accept evidence offered by one side or the other, or if I ordered that certain testimony be stricken, then you must not consider those things in reaching your verdict.

**INSTRUCTION NO. 8**

Judicial Neutrality

As the judge, I am neutral. If I have said or done anything that makes it appear that I have an opinion about the merits of the parties’ claims or defenses, that was not my intention. Do not interpret anything I have said or done as indicating that I have any particular view of the evidence or of the decision you should reach. Also, nothing in these instructions or the verdict form that I will give you is meant to suggest what your verdict should be.

**INSTRUCTION NO. 9**

Objections by Counsel

The lawyers have a duty to raise appropriate objections. You must not disfavor a lawyer who makes a legal objection to evidence.

You are the sole judges of the credibility of all witnesses. It is your job to determine what weight and effect to give all evidence. You should not try to guess my opinion on the importance of any evidence because of my rulings on objections.

If I sustained an objection to a question, you must disregard the question entirely. You may not draw any inferences from the wording of the question or speculate as to what the answer might have been. Likewise, you may not consider anything that I ordered you to disregard. The same rule applies to any exhibits I did not permit you to see. You may not speculate about what the exhibit might have shown.

**INSTRUCTION NO. 10**

Preponderance of the Evidence

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence. This is a lower burden of proof than “beyond a reasonable doubt.”

When I tell you that a party must prove something by a “preponderance of the evidence,” I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true. Another way of saying this is proof by the greater weight of evidence, however slight.

The preponderance of the evidence is not determined simply by counting the number of witnesses or the amount of the testimony. Rather, it is determined by evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

When answering questions asked on the Special Verdict form that apply the preponderance of the evidence standard, if you find that the party’s claim or defense is more likely true than not true, you should answer that question with a “Yes.” If, however, the evidence appears to be equally balanced or in favor of the other party’s position, then you must answer that question with a “No.”

If the evidence should fail to establish any essential element of a party’s claim or defense by a preponderance of the evidence, then you should find for the other party as to that claim or defense.

**INSTRUCTION NO. 11**

Clear and Convincing Evidence

Some facts in this case must be proved by a higher level of proof called “clear and convincing evidence.” When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

I will tell you specifically which of the facts must be proved by clear and convincing evidence.

**INSTRUCTION NO. 12**

Evidence—Closing

You must base your decision only on the evidence that you saw and heard here in court. Evidence includes what the witnesses said while they were testifying under oath and any exhibits admitted into evidence.

Nothing else is evidence. The lawyers’ statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence. In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

**INSTRUCTION NO. 13**

“Evidence” Defined

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have presented them; and all facts which may have been admitted or stipulated.

Statements and arguments of counsel are not evidence in this case. But when the parties stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason and common sense would lead you to draw from facts that are established by the evidence in the case. In the absence of such facts, you may not draw an inference.

You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.

**INSTRUCTION NO. 14**

Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified that he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony, someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

**INSTRUCTION NO. 15**

Limited Purpose Evidence

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose.

**INSTRUCTION NO. 16**

Witness Credibility

In deciding this case, you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness’s testimony:

* Personal interest: Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?
* Bias: Do you believe the accuracy of the testimony was affected by any bias or prejudice?
* Demeanor: Is there anything about the witness’s appearance, conduct or actions that causes you to give more or less weight to the testimony?
* Consistency: How does the testimony tend to support or not support other believable evidence that is offered in the case?
* Knowledge: Did the witness have a good opportunity to know what the witness is testifying about?
* Memory: Does the witness’s memory appear to be reliable?
* Reasonableness: Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. In deciding whether or not to believe a witness, you may also consider anything else you think is important. You may not consider, however, a witness’s religious beliefs in evaluating his or her credibility.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness’s testimony.

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

In deciding whether a witness testified truthfully, remember that no one’s memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

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

**INSTRUCTION NO. 17**

Inconsistent Statements

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that the witness previously said or did something, or failed to say or do something, that is inconsistent with the testimony the witness gave at this trial.

If a prior statement was made under oath, you may consider it as evidence of the truth of the matter contained in that prior statement. Otherwise, earlier statements of a witness are not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and whether they affect the credibility of that witness. If you believe that a witness has been discredited, you may give the testimony of that witness whatever weight you think it deserves.

**INSTRUCTION NO. 18**

Deposition Testimony

Certain testimony of witnesses who, for some reason, could not be present to testify from the witness stand has been presented to you by reading of a deposition. A deposition is sworn testimony of a witness that was given previously, outside of court, with a lawyer for each party present and entitled to ask questions. Such testimony is evidence and you should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

**INSTRUCTION NO. 19**

Statement of Opinion

Under limited circumstances, I allowed one or more witnesses to express an opinion. Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

**INSTRUCTION NO. 20**

Habit—Routine Practice

You may consider evidence of the habit of a person or of the routine of a business or organization in determining whether the conduct of a person or organization on a particular occasion was in conformity with the habit or routine practice.

**INSTRUCTION NO. 21**

Recollection of Jurors Controls

If any reference by the court or by the attorneys to matters of evidence is inconsistent with your own recollection, it is your recollection that matters.

**INSTRUCTION NO. 22**

Introduction to Substantive Law

Now that I have explained the procedures and general instructions, I will explain the specific laws for each of the claims at issue in this case.

**INSTRUCTION NO. 23**

“Cause” Defined

Later instructions refer to the concept of causation. As used in the law, the word “cause” has a special meaning, and you must use this meaning whenever you apply the word. “Cause” means that:

1. The person’s act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and
2. The person’s act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature. There may be more than one cause of the same harm.

**INSTRUCTION NO. 24**

Agency

A business entity such as a corporation or limited liability company acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

**INSTRUCTION NO. 25**

Plaintiffs’ Claims

The Plaintiffs assert \_\_\_\_ claims against the Defendants, which are summarized as follows:

1. [INSERT BRIEF SUMMARY OF CLAIMS]

It is the Plaintiffs’ burden of proof to establish their claims. I will now explain the elements the Plaintiffs must prove for you to find the Defendants liable on each of the respective claims.

**INSTRUCTION NO. 26**

[INSERT SUBSTANTIVE INSTRUCTIONS]

The Plaintiffs’ first claim arises under \_\_\_\_\_\_\_\_\_.

**INSTRUCTION NO. 27**

Introduction to Damages

I will now instruct you regarding damages for the Plaintiffs’ claims. My instructions are given as a guide for calculating a plaintiff’s damages on these claims if you find that a plaintiff is entitled to them. But if you decide that a plaintiff is not entitled to recover damages on these claims, then you must disregard these instructions.

If you decide that the defendant’s fault caused injury to a plaintiff, you must decide how much money will fairly and adequately compensate that plaintiff for that injury. There are two kinds of damages applicable to Plaintiffs’ claims: economic and non-economic.

**INSTRUCTION NO. 28**

Proof of Damages

To be entitled to damages, a plaintiff must prove two things:

First, that damages occurred. There must be a reasonable probability, not just speculation, that the plaintiff suffered damages from the defendant’s fault.

Second, the amount of damages. The level of evidence required to prove the amount of damages is not as high as what is required to prove the occurrence of damages. But there must still be evidence—not just speculation—that gives a reasonable estimate of the amount of damages. The law does not require mathematical certainty.

If a plaintiff has proved that he or she has been damaged and has established a reasonable estimate of those damages, the defendant may not escape liability because of some uncertainty in the amount of damages.

**INSTRUCTION NO. 29**

Economic Damages

Economic damages are the amount of money that will fairly and adequately compensate the plaintiff for measurable losses of money or property caused by the defendant’s fault.

Economic damages are only recoverable for loss in an amount that the evidence proves with reasonable certainty, although the actual amount of damages need not be proved with precision. Any alleged damages that are only remote, possible or a matter of guesswork are not recoverable.

**INSTRUCTION NO. 30**

Non-Economic Damages Defined

Non-economic damages are the amount of money that will fairly and adequately compensate the plaintiff for losses other than economic losses.

Non-economic damages are not capable of being exactly measured, and there is no fixed rule, standard, or formula for them. Non-economic damages must still be determined even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of non-economic damages.

You may calculate non-economic damages for the loss of such things as love, companionship, society, comfort, pleasure, advice, care, protection, and affection that the plaintiff has sustained and will sustain in the future.

**INSTRUCTION NO. 31**

Mitigation of Damages

A plaintiff has a duty to exercise reasonable diligence and ordinary care to minimize any damages caused by the defendant’s fault. Any damages awarded to a plaintiff should not include those that the plaintiff could have avoided by taking reasonable steps. It is the defendant’s burden to prove that the plaintiff could have minimized his or her alleged damages, but failed to do so. If the plaintiff made reasonable efforts to minimize his or her alleged damages, then your award should include the amounts that he or she reasonably incurred to minimize them.

**INSTRUCTION NO. 32**

Collateral Source Payments

You shall award damages in an amount that fully compensates the plaintiff. Do not speculate on or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict, I will make whatever adjustments may be appropriate.

**INSTRUCTION NO. 33**

Arguments of Counsel Not Evidence of Damages

You may consider the arguments of the lawyers to assist you in deciding the amount of any damages, but their arguments are not evidence.

**INSTRUCTION NO. 34**

Punitive Damages—Introduction

In addition to compensatory damages, Plaintiffs seek to recover punitive damages against Defendants on Plaintiffs’ wrongful termination and fraud claims. Punitive damages are intended to punish a wrongdoer for extraordinary misconduct and to discourage others from similar conduct. They are not intended to compensate Plaintiffs for their loss.

Punitive damages may only be awarded if a plaintiff has proven by clear and convincing evidence that the defendant’s conduct:

1. was willful and malicious; or

(2) was intentionally fraudulent; or,

(3) manifested a knowing and reckless indifference toward, and a disregard of, the rights of others, including the plaintiff.

“Knowing and reckless indifference” means that (a) the defendant knew that such conduct would, in a high degree of probability, result in substantial harm to another; and (b) the conduct must be highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger or harm would be apparent to a reasonable person.

Punitive damages are not awarded for mere inadvertence, mistakes, errors of judgment and the like, which constitute ordinary negligence.

**INSTRUCTION NO. 35**

Special Verdict Form

I am going to give you a form called the Special Verdict that contains questions for you to answer. You must answer the questions based upon these instructions and the evidence you have seen and heard during this trial. Please bear in mind that each question on the form is important.

**POST-ARGUMENT INSTRUCTIONS**

**POST-ARGUMENT INSTRUCTION NO. 1**

Jury Deliberations—Overview

You have now heard all of the evidence and the arguments of counsel. In a moment you will be escorted to the jury room and each of you will be provided with a copy of the instructions that I have given you. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson who will preside over your deliberations and be your spokesperson here in the courtroom. I suggest that you should then review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law as stated in the instructions.

Once you have reviewed the instructions, you may also wish to review the Special Verdict form to understand the questions you will need to answer. I would also suggest that before you begin discussing the issues presented to you for resolution, you may find it helpful for each of you to write down your own views about the case. This may help you to clarify your own thinking about the issues.

You should then begin to deliberate. When you have reached unanimous agreement as to your verdict, you will have the foreperson fill it the Special Verdict form, date and sign the form, and then return your verdict to the courtroom.

Your deliberations will be confidential. You will not be required to explain your verdict to anyone.

**POST-ARGUMENT INSTRUCTION NO. 2**

Commencement of Deliberations

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 his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

**POST-ARGUMENT INSTRUCTION NO. 3**

Jury Deliberations

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous. This means each of you must agree on the answer to each question on the Special Verdict form.

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 wrong. 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 mere purpose of returning a 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 in the case.

**POST-ARGUMENT INSTRUCTION NO. 4**

Do Not Speculate or Resort to Chance

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.

**POST-ARGUMENT INSTRUCTION NO. 5**

Communications with the Court During Deliberations

If it becomes necessary during your deliberations to communicate with the court, you may send a note through a court security officer, signed by your foreperson or by one or more jurors. No member of the jury should 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 on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the court security officer will take that he, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person—not even to the court—how the jury stands numerically or otherwise until you have reached a unanimous verdict.

**POST-ARGUMENT INSTRUCTION NO. 6**

Schedule for Deliberations

During your deliberations, you are able as a group to set your own schedule for deliberations. I would suggest that you not feel pressured to continue your deliberations if you feel so exhausted or stressed that you may risk compromising your conviction simply to finish your deliberations. A good nights rest and time for reflection may be helpful to resolve doubts you may have. You may, however, 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.

I do ask, however, that you notify the court by a note when you plan to recess for the evening.