
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, [CENTRAL/NORTHERN] DIVISION

, Plaintiff, v. , Defendant.	TRIAL ORDER Case No. District Judge David Nuffer
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The final pretrial conference in this matter is scheduled for **[about seven – ten days before trial]**[day of week] [month] [day], [year] at [time]__ . m. in Room [room]. Counsel who will try the case must attend.

This case is set for a [days] day jury trial to begin on **[day of week] [month] [day], [year] at [time]__ . m. in Room [room]**. The attorneys must **appear in court at 8:00 a.m.** on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court and that motion may be joined by any other party.

2. Preparation for Final Pretrial

The court has adopted its own standard general jury instructions and standard voir dire questions in the form of a questionnaire, copies of which are [posted on the court’s website](#).

[Standard Civil Jury Instructions](#)

[Civil Juror Questionnaire](#)

[Optional Supplemental Questionnaire](#)

[Civil Advance Juror Questionnaire](#)

Note also the [Jury Selection Procedures](#) and [Courtroom Seating Chart](#).

The procedure for submitting proposed jury instructions and additional voir dire questions is as follows:

(a) The parties must serve their proposed jury instructions, special verdict and voir dire questions on each other by **twenty-eight days before the final pretrial**. These shall not be filed with the court. The parties must then confer in order to agree on a single set of instructions to the extent possible. The use of a [questionnaire submitted to the jury in advance of trial](#) (beyond the [standard questionnaire](#) used during the in-court jury selection and the [optional supplemental questionnaire](#)) may be advisable. Counsel shall meet and confer with the other parties and must file notice of any request for an [advance questionnaire with the proposed joint questionnaire](#) by **forty-two days before the final pretrial**.

(b) If the parties cannot agree upon one complete set of final instructions, special verdict and voir dire questions, they must file separately those instructions, special verdict and voir dire questions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions, special verdict and voir dire questions for the case.

(c) The joint proposed instructions, special verdict and voir dire questions (along with the proposals upon which the parties have been unable to agree) must be filed with the court by **at least twenty one days before the final pretrial**. Each instruction must be labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., “Joint Instruction No. 1” or “Plaintiff’s Instruction No. 1”). Include citation to the authority that forms the basis for the instruction.

(d) A copy of the joint proposed instructions, special verdict and voir dire questions must be emailed to dj.nuffer@utd.uscourts.gov as a Word or WordPerfect document **at least three weeks before the final pretrial**. Include the case number and case name in the email subject line. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(e) Each party must file its objections, if any, to jury instructions, the special verdict and voir dire questions proposed by any other party by **no later than fourteen days before the final pretrial**. Any objections must recite the proposal in its entirety and specifically highlight the objectionable language contained therein. Objections to instructions must contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit an alternative instruction covering the pertinent subject matter or principle of law. A copy of the proposed alternative instruction must be emailed to dj.nuffer@utd.uscourts.gov as a Word or WordPerfect document. Include the case number and case name in the email subject line. Any party may, if it chooses, submit a brief written response in support of its proposed instructions **no later than one week days before the final pretrial**.

(f) All instructions must be short, concise, understandable, and *neutral* statements of law. Argumentative instructions and voir dire questions are improper and will not be given.

(g) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) may be acceptable. A modified jury instruction must, however,

identify the exact nature of the modification made to the form instruction and cite authority, if any, supporting such a modification.

3. Motions in Limine

All motions in limine are to be filed with the court by **at least fourteen days before the final pretrial**, unless otherwise ordered by the court. A separate motion must be filed for each preliminary ruling sought. Each motion must specifically identify the relief sought, and must contain the memorandum of law in the same document. (See [DUCivR 7-1\(a\)\(1\)](#)). A proposed order should be emailed to dj.nuffer@utd.uscourts.gov as a Word or WordPerfect document. Opposition memoranda must be filed by **at least seven - ten days before the final pretrial**. No memorandum in support of, or in opposition to, a motion may be longer than three (3) pages in length.

4. Courtroom Equipment and Recorded Testimony

If counsel wish to use any courtroom equipment, such as the evidence presentation system, easels, projection screens, etc., they must so state in the final pretrial order and at the final pretrial. Trial counsel and support staff are expected to familiarize themselves with any equipment they intend to use in advance of trial.

Any party desiring to present testimony of a witness by recorded means, whether video, audio or paper, must serve a designation of the testimony **twenty one days before the final pretrial**. This shall not be filed with the court. The designation shall be made using the [Deposition Designation Form](#) on [Judge Nuffer's web page](#). Any objection must be served by **fourteen days before the final pretrial**, and shall use the same form. The parties must meet and confer (with at least one in-person meeting) to resolve any disputes. The designating party shall file the completed Deposition Designation Form by **seven days before the final pretrial** and any motion regarding this subject must be filed by **seven days before the final pretrial**. Disputes evident in the [Deposition Designation Form](#) do not require a motion. The completed [Deposition Designation Form](#) shall be emailed to dj.nuffer@utd.uscourts.gov on that date.

A party intending to use recorded testimony is strongly encouraged to display the deposition text as the deposition is presented, and if read, to use a professional reader who has rehearsed the reading with the attorney.

5. Pretrial Order

At the pretrial conference, plaintiff must present a joint proposed pretrial order which has been approved by all counsel, noting any areas of dispute. The pretrial order must conform generally to the requirements of [DUCivR 16-1](#) and to the [approved form of pretrial order](#) which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah. A copy of the proposed pretrial order must be emailed to dj.nuffer@utd.uscourts.gov as a Word or WordPerfect document.

In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

(a) The pretrial order must contain an additional subparagraph (d) Statement of the Case which will be used to describe the case to the jury.

(b) The statement of uncontroverted facts called for in Section 3 of the [General Form of the Pretrial Order](#) must be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. No further evidence as to the agreed facts may be entered into the record at trial.

(c) In reference to Section 7 of the [General Form of the Pretrial Order](#), regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. In most cases, the parties will stipulate to qualification, although in appropriate cases, voir dire or cross-examination of an expert's qualification may be permitted and this examination may go beyond the scope of direct oral testimony as to qualification.

6. Trial Briefs

Each party must file a Trial Brief **no later than seven days before trial**. Each brief must include a list of all witnesses to be called and a short statement as to the substance of that witness's testimony. Plaintiff's trial brief must contain an outline of the elements of each cause of action, with the facts supporting that element listed under each element. Defendant's trial brief must contain a similar outline of the elements and facts for each cause of action in any counterclaim or third-party claim. Any party raising an affirmative defense must outline the elements of such defense and the facts supporting that element.

7. Exhibit Lists/Marking Exhibits

(a) Parties must meet and confer to avoid marking the same exhibit twice.

(b) After eliminating duplicate exhibits, each party must prepare an exhibit list in Word or WordPerfect format for the court's use at trial. Standard [forms of exhibit lists](#) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801-524-6150.

(c) All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

(d) Plaintiff must mark exhibits by number starting at "1." Defendant must mark exhibits by letter unless defendant anticipates using more than twenty (20) exhibits, in which case counsel must agree on number ranges to accommodate numbering all exhibits. Examples of alternative methods would be assigning numbers 1 – 99 to plaintiff and 100 to 199 to defendant. In a case with multiple parties who require separate exhibit numbers, counsel must agree on number ranges to accommodate numbering all exhibits.

(e) Pages of documentary exhibits must retain bates stamps used when the documents were produced in discovery.

(f) Original exhibits must be stapled.

(g) Exhibit lists, marked exhibits, and courtesy copies must be submitted to the court three (3) business days before trial. The exhibit list must be emailed as a Word or WordPerfect document to dj.nuffer@utd.uscourts.gov.

(h) Courtesy copies of exhibits on a CD/DVD Rom in PDF format are preferred. Optical Character Recognition (OCR) must be run on the PDF files to enable text searching of the exhibits. If a party marks more than ten (10) exhibits, courtesy copies of exhibits **must** be provided in PDF format on a CD/DVD Rom. The naming of PDF format exhibit data files must enable sorting by exhibit number.

(i) If a CD/DVD Rom with courtesy copies of exhibits in PDF format is not provided (because the party is marking less than ten exhibits and has elected not to provide courtesy copies of exhibits on a CD/DVD Rom in PDF format) two (2) paper courtesy copies of exhibits in a tabbed binder must be delivered to the court.

8. Witness Lists

All parties are required to prepare a separate witness list for the court's use at trial. The list contained in the pretrial order will not be sufficient. Standard [forms of witness lists](#) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801-524-6150. Witness lists must be emailed as a Word or WordPerfect document to dj.nuffer@utd.uscourts.gov three (3) business days before trial.

Each afternoon of trial, by no later than 6:00 p.m. counsel anticipating examination of witnesses the next day shall provide the names of witnesses anticipated to be examined to all counsel and to dj.nuffer@utd.uscourts.gov, and by no later than 8:00 p.m. shall by the same means provide the list of exhibits anticipated to be used with each witness.

9. In Case of Settlement

Pursuant to [DUCivR 41-1](#), the court will tax all jury costs incurred as a result of the parties' failure to give the court actual notice of settlement less than one (1) full business day before the commencement of trial. Leaving a voice mail message or sending a notice by fax or email is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator and a member of this chamber's staff by means of a personal visit or by person-to-person telephonic communication at least one full business day before the commencement of trial.

10. Courtroom Conduct

In addition to the rules outlined in [DUCivR 43-1](#), the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:00 a.m. until 1:30 p.m. or 2:30 p.m., with two (2) short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you. Any motions or matters that need to be addressed outside the jury will be heard at 8:00 a.m. or after the trial day has recessed. Usually, the court has other hearings set after 2:30 p.m.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel must state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, “Objection . . . irrelevant and inadmissible under Rule 402” or “Objection . . . hearsay and inadmissible under Rule 802.”

(f) Sidebar conferences are discouraged. Most matters requiring argument must be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel must instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their standard salutation (Mr., Ms., Mrs., Dr., Officer, Detective, ect.) and their surnames, NOT by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Counsel should not refer to other witnesses’ testimony in their questioning. For example, counsel should not ask “Witness A testified . . . would you agree?”

(l) Offers of, or requests for, a stipulation must be made outside the hearing of the jury.

(m) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

(n) The same attorney must do initial and rebuttal closing arguments, and rebuttal closing argument may not take more time than the initial closing argument.

(o) Please review the guidelines for [Creating the Best Transcript Possible](#) with your entire trial team and witnesses before trial.

SIGNED this _____ day of May, 2018.

BY THE COURT:

David Nuffer
United States District Judge

Any party desiring to present testimony of a witness by recorded means, whether video, audio or paper, must file a designation of the testimony **twenty one days before the final pretrial**. The designation shall be made using the [Deposition Designation Form](#) on [Judge Nuffer's web page](#). Any objection must be made by **fourteen days before the final pretrial**, and shall use the same form. The parties must meet and confer (with at least one in-person meeting) to resolve any disputes. Any motion regarding this subject must be filed by **seven days before the final pretrial**.

A party intending to use recorded testimony is strongly encouraged to display the deposition text as the deposition is presented, and if read, to use a professional reader who has rehearsed the reading with the attorney.

4. Pretrial Order.

At the pretrial conference, plaintiff must present a joint proposed pretrial order which has been approved by all counsel, noting any areas of dispute. The pretrial order must conform generally to the requirements of DuCivR 16-1 and to the [approved form of pretrial order](#) which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah. A copy of the proposed pretrial order must be emailed to dj.nuffer@utd.uscourts.gov as a Word or WordPerfect document.

In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

(a) The statement of uncontroverted facts called for in Section 3 of the General Form of the Pretrial Order must be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. No further evidence as to the agreed facts may be entered into the record at trial.

(b) In reference to Section 7 of the General Form of the Pretrial Order, regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. In most cases, the parties will stipulate to qualification, although in appropriate cases, voir dire or cross-examination of an expert's qualification may be permitted and this examination may go beyond the scope of direct oral testimony as to qualification.

5. Proposed Findings of Fact and Conclusions of Law

Each party must file Proposed Findings of Fact and Conclusions of Law **no later than seven days before trial**. The Conclusions of Law must outline of the elements of each cause of action, or affirmative defense, and briefly summarize the supporting facts under each element.

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- (d) Plaintiff must mark exhibits by number starting at 1. Defendant must mark exhibits by letter unless defendant anticipates using more than 20 exhibits, in which case counsel must agree on number ranges to accommodate numbering all exhibits. Examples of alternative methods would be assigning numbers 1 – 99 to plaintiff and 100 to 199 to defendant. In a case with multiple parties who require separate exhibit numbers counsel must agree on number ranges to accommodate numbering all exhibits.
- (e) Pages of documentary exhibits must retain bates stamps used when the documents were produced in discovery.
- (f) Original exhibits must be stapled.
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If the case is settled, counsel must jointly advise a member of this chamber's staff by means of a personal visit or by person-to-person telephonic communication at least one full

business day before the commencement of trial. Leaving a voice mail message or sending a notice by fax or email is not considered sufficient notice to the court.

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- (b) Stand as court is opened, recessed or adjourned.
- (c) Stand when addressing, or being addressed by, the court.
- (d) In making objections and responding to objections to evidence, counsel must state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402" or "Objection . . . hearsay and inadmissible under Rule 802."
- (e) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.
- (f) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel must instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.
- (g) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.
- (h) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.
- (i) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session.

Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

(j) Please review the guidelines for [Creating the Best Transcript Possible](#) with your entire trial team and witnesses before trial.

DATED this ____ day of May, 2018.

BY THE COURT:

David Nuffer
United States District Judge

Jaryl L. Rencher - #4903
D. Greg Anjewierden - #13135
RENCHER ANJEWIERDEN
460 South 400 East
Salt Lake City, Utah 84111
Telephone: (801) 961-1300
Facsimile: (801) 961-1311

Attorney for the Defendants P.K Clark and Whitecap Institute

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

GAIL O'NEAL

Plaintiff,

v.

P.K. CLARK; WHITECAP INSTITUTE;
and JOHN AND JANE DOES 1-10.

Defendants.

)
)
) **DEFENDANTS' MOTION TO LIMIT**
) **GOLDEN RULE AND REPTILIAN**
) **ARGUMENTS (Motion 2)**

)
)
) Civil No. 2:14-cv-363-DN

)
) Judge David Nuffer
)
)
)

Defendants request that the Court enter an order precluding Plaintiff from making any "Golden Rule" or "Reptilian" arguments at trial.

Memorandum in Support

Defendants request that the Court enter an order precluding Plaintiff from making any "Golden Rule" or "Reptilian" arguments at trial. Golden Rule arguments are those that ask the jury to put themselves in the shoes of the Plaintiff, rather than determining if Defendant caused Plaintiff any damage by acting negligently. Reptilian arguments are those that ask the jury to

make their decision for the safety of the community, rather than determining any level of Defendant's negligence. Both types of arguments are improper and prejudicial, and the Court should preclude Plaintiffs from making these arguments at trial.

Plaintiff alleged in her complaint that Dr. Clark improperly performed a right maxillary sinus lift which allegedly caused a sinus perforation in the upper right area of Plaintiff's mouth. *See* Amended Complaint at ¶ 76, attached as Exhibit 1. The Court should enter an order precluding any "Golden Rule" or "Reptilian" arguments at trial regarding damages relating to the right maxillary sinus lift. "A golden rule argument is defined as a jury argument in which a lawyer asks the jurors to reach a verdict by imagining themselves or someone they care about in the place of the injured plaintiff..." *Green v. Louder*, 29 P.3d 638, 647 n.13 (Utah 2001). In *Green*, the plaintiff made the following statements in closing arguments that the court cited as examples:

- "Look how close those cars are to having a head on collision and then ask yourself if you would do the same thing."
- "Before you impose standards on [plaintiff] higher than you pose [sic] on yourself, you must realize that he is only held to be the reasonable person, not the perfect person."
- "How many of you, the standard of the reasonable person, would stay that close to a head on collision with a car coming in your own lane without trying to get somewhere else."
- "[A] verdict that [plaintiff] was even partially at fault for this accident is to say in your heart, well I have never been seconds from an imminent head on collision." *Id.* at 648.

The Utah Supreme Court then gave the standard on disallowing golden rule arguments in Utah: the use of golden rule arguments is improper with respect to damages.¹ *Id.* The Tenth Circuit of the U.S. Court of Appeals also recognizes as well established law that a party may not exhort the jury to “place itself in a party's shoes with respect to damages.” *Shultz v. Rice*, 809 F.2d 643, 651–52 (10th Cir.1986). The Court should therefore enter an order precluding any “Golden Rule” arguments with respect to damages in this case.

The Court should also preclude “Reptilian” arguments. These are arguments that ask the juror to make a decision for the safety of the community in which the juror lives. This is a form of Golden Rule argument. The Court should preclude these types of damages arguments at trial. Since Golden Rule and Reptilian arguments attempt to sway a jury from the normal negligence standards, the Court should disallow them.

DATED this 5day of September 2017

RENCHER ANJEWIERDEN

/s/ D. Greg Anjewierden
D. Greg Anjewierden
Attorney for Defendants

¹ Defendants acknowledge that the court in *Green* did not disallow the statements cited above, as they were not made with respect to damages. However, the holding still applies that the use of golden rule arguments is improper with respect to damages. Defendants included these citations as examples of Golden Rule arguments.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2017, a true and correct copy of the Defendants' Motion to Prohibit Reference to Liability Insurance and a copy of the foregoing Certificate of Service was served via U. S. mail to the following:

Alyson Carter McAllister
311 South State Street #240
SLC, UT 84111

/s/ Paula Powell

Sample Docket Text Order on Motion in Limine

09/15/2017	77	<p>DOCKET TEXT ORDER granting in part and denying in part 56 Motion in Limine. No "Golden Rule" or "Reptilian" arguments directed at the issue of damages will be permitted at trial. "Golden Rule" arguments are those in which the jury is exhorted to place itself in the party's shoes with respect to damages. "Reptilian" arguments were not defined by the parties, but apparently are those in which the jury is exhorted to make their decision on damages based on the safety of the community. Such arguments as to damages are improper and prejudicial. See <i>Green v. Louder</i>, 29 P.3d 638, 647-48 (Utah 2001) (citing <i>Shultz v. Rice</i>, 809 F.2d 643, 651-52 (10th Cir. 1986)).</p> <p>However, such arguments may be directed at the issue of ultimate liability. See <i>Id.</i></p> <p>Signed by Judge David Nuffer on 09/15/2017. No attached document. (apm) (Entered: 09/15/2017)</p>
09/15/2017	78	<p>DOCKET TEXT ORDER denying 57 Motion in Limine. The 57 Motion does not identify any specific evidence Plaintiff may seek to admit which was responsive to discovery requests and was not provided in the responses. When the parties exchange exhibits before trial, a party must object to specific evidence which it believes was not properly disclosed so that these issues can be resolved out of the presence of the jury. At trial objections may be made to testimony which a party claims was not properly disclosed. Signed by Judge David Nuffer on 09/15/2017. No attached document. (apm) (Entered: 09/15/2017)</p>
09/15/2017	81	<p>DOCKET TEXT ORDER denying 62 Motion in Limine. Evidence of Plaintiff's oral hygiene is admissible at trial. Such evidence is relevant to the issue of causation, and its probative value is not substantially outweighed by any potential prejudicial effect. See Fed. R. Evid. 401, 402, 403. Signed by Judge David Nuffer on 09/15/2017. No attached document. (apm) (Entered: 09/15/2017)</p>

Case Name O’Neal v. P.K. Clark/Whitecap Institute Case Number 14-CV-363
Deposition of W. Davis Merritt, M.D. taken Tuesday, June 23, 2015

Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>·5· . . . A· ·Correct.</p> <p>·6· . . . Q· ·And what was the purpose of ordering a</p> <p>·7· ·pathology report?</p> <p>·8· . . . A· ·Primarily to rule out malignancy as a cause</p> <p>·9· ·for the patient's sinusitis.</p> <p>10· . . . Q· ·In your opinion, the surgery that you</p> <p>11· ·performed for Ms. O'Neal, was it medically necessary</p> <p>12· ·and appropriate?</p> <p>13· . . . A· ·Yes.</p> <p>14· . . . Q· ·Was it successful in getting rid of the sinus</p> <p>15· ·disease that she had?</p> <p>16· . . . A· ·Yes.</p> <p>17· . . . Q· ·And thereafter, are you aware of whether her</p> <p>18· ·oral antral fistula was properly remedied?</p> <p>19· . . . A· ·Hmm· No.</p>			
<p>24:12-13; 24:14-19; 24:20-25:1</p> <p>12· . . . Q· ·I'm not sure if I understood the testimony</p> <p>13· ·you gave just a minute ago.</p> <p>14· . . . ·Did you say that you did not think -- did you</p> <p>15· ·give an opinion about whether Dr. Stern's procedure</p> <p>16· ·that he performed to close the fistula was appropriate?</p> <p>17· . . . A· ·The plan to close it or the results?</p> <p>18· . . . Q· ·His plan to close it.</p> <p>19· . . . A· ·It was appropriate.</p> <p>20· . . . Q· ·Okay· And -- and I just -- maybe I didn't</p> <p>21· ·understand what your answer was· Were you aware of</p> <p>the</p> <p>22· ·results, whether he was successful in closing the</p> <p>23· ·fistula?</p> <p>24· . . . A· ·I don't have correspondence or records</p> <p>25· ·indicating it was successful· And I don't recall a</p> <p>1· ·phone conversation with Dr. Stern· But I know him very</p> <p>2· ·well, so if it wasn't successful, I'm sure he would</p> <p>3· ·have told me.</p>	<p>25:1-3</p> <p>1· phone conversation with Dr. Stern· But I know him very</p> <p>·2· ·well, so if it wasn't successful, I'm sure he would</p> <p>·3· ·have told me.</p> <p>Defendant objects to Plaintiff's proposed completeness addition in 25:1-3. Dr. Merritt lacks foundation to testify as to what Dr. Stern would or wouldn't have said or done. Defendant also objects as this testimony calls for speculation.</p> <p>Allowing lines 24:20-25:1, without finishing the answer to the question is misleading. This suggests the closure was not successful, which is the opposite of what Dr. Merritt's understanding is given his history and pattern of dealings with Dr. Stern.</p>		<p>OVERRULED. The testimony is not speculative and is based on Dr. Merritt's personal knowledge of and prior experience with Dr. Stern.</p>
<p>DEFENDANT COUNTER-DESIGNATIONS</p>			

Case Name O'Neal v. P.K. Clark/Whitecap Institute **Case Number** 14-CV-363
Deposition of W. Davis Merritt, M.D. **taken** Tuesday, June 23, 2015

<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>10:24-11:14 24 · · · Q · And beyond those letters between you and 25 · Dr. Stern, do you recall any other communication 1 · between both of you? ·2· · · · A· ·I can't recall when the phone call was. I ·3· ·have this vague memory I spoke to him on the phone ·4· ·about it, but I can't recall when it was or what we ·5· ·said. 6 · · · · Q · And so you recall one phone conversation 7 · between both of you? ·8· · · · A· ·Uh-huh (affirmative). 9 · · · · Q · Beyond that, all communication was via 10 · letter? 11· · · · A· ·Yes. 12 · · · · Q · Which is contained in Ms. O'Neal's chart, 13 · correct? 14· · · · A· ·Yes.</p>			
<p>13:16-18 16 · · · · Q · Are you aware that Dr. Shane referred 17 · Ms. O'Neal to Dr. P.K. Clark in Heber, Utah? 18· · · · A· ·No.</p>			
<p>18:3-18 3 · · · · Q · If she has sinusitis, would that exacerbate 4 · an infection in the sinus? In other words, if she has 5 · a history of sinusitis before this infection that she 6 · got in the upper right maxillary sinus, can that 7 · somehow exacerbate it? In other words, can that 8 · increase or -- what's another word -- make the 9 · infection worse? 10· · · · A· ·Well, it's -- it's -- the question doesn't -- 11· ·the question doesn't make sense because sinusitis is 12· ·both an inflammatory and infectious condition, and they 13· ·can coexist. Infection and inflammation can coexist 14· ·for a long period of time. So it's not possible to say 15· ·when one infection began and another -- and when it</p>	<p>Plaintiff objects to 18:3-18 pursuant to Rule 403 of the Federal Rules of Evidence. Plaintiff finds it difficult to determine what exactly the question is, and whether the answer is even responsive to the question or is complete. This testimony would be confusing to the jury and should be excluded. The question and answer are not confusing and should be allowed. This question asks that if Plaintiff has a history of sinusitis, will that exacerbate the eventual sinus infection she develops. The response from Dr. Merritt indicates that it's difficult to determine when one infection ends and another begins, which will tell the jury that it's difficult to determine if the infection she develops is a result of</p>		<p>OVERRULED. The testimony is relevant to causation and its probative value is not substantially outweighed by any potential prejudice.</p>

Case Name <u>O'Neal v. P.K. Clark/Whitecap Institute</u> Case Number <u>14-CV-363</u> Deposition of <u>W. Davis Merritt, M.D.</u> taken <u>Tuesday, June 23, 2015</u>			
Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
16· ·stopped -- 17· ···· Q· ·Okay. 18· ··· A· --- in a patient who's disease is chronic.	treatment from Dr. Clark or her history of sinusitis. Defendant's interpretation of this answer proves Plaintiff's point. This answer says nothing about the causation of Plaintiff's infection, and more likely refers to the multiple infections Plaintiff suffered post surgery and the difficulty in telling if it was one ongoing infection that was not being effectively treated, or recurrent infections.		
19:13-20:1 13 if Dr. Clark is going to 14 ·perform a sinus augmentation prior to some dental work, 15 ·do you think it would be relevant to discuss her 16 ·history of sinusitis? 17· ··· A· ·You know, that's really a question about 18· ·dental practice, and I'm not an expert in dentistry. 19· ··· Q· ·Perfect· Thank you. 20· ······ In the next -- this is two sentences later. 21· ·This is again on number 11· She says -- at least your 22· ·note says, "She lives with her daughter and son who 23· ·help in the management of their ranch here in Lander." 24· ······ Do you recall any conversation about that, 25· ·any details about that? 1· ··· A· ·No, I don't.	Plaintiff objects to 19:13-18 based on Rules 702 and 703 of the federal rules of evidence. Dr. Merritt states he is not an expert in dentistry, and therefore cannot answer the question. See Plaintiff's MIL No. 64. This question is appropriate given the answer. It is important for the jury to understand that Dr. Merritt is not an expert in dentistry. And that his opinions can't be relied upon in a standard of care analysis. This question and answer will demonstrate that to the jury.		OVERRULED. The question is appropriate given the answer. The testimony is relevant to the scope of Dr. Merritt's opinions.
21:3-10 3· ··· Q· ·So do you have any opinion as -- you ·4· ·mentioned that she had a sinus disease in her upper ·5· ·right maxillary, as well as I think you said the ·6· ·anterior ethmoid right? ·7· ··· A· ·That's correct. ·8· ··· Q· ·Do you have any opinion as to the etiology of ·9· ·that sinus disease? 10· ··· A· ·I don't.			
22:13-18 13· ··· Q· ·At any point did Dr. Stern relay to you any 14· ·opinion he had as to Dr. Clark's care?	Plaintiff objects to 22:13-18 pursuant to Rules 702-703 and 403 of the Federal Rules of Evidence. First, it is not particularly relevant for the jury to know that		OVERRULED. The questions are appropriate given the

Case Name **O’Neal v. P.K. Clark/Whitecap Institute** *Case Number* **14-CV-363**
Deposition of **W. Davis Merritt, M.D.** *taken* **Tuesday, June 23, 2015**

<p>Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)</p>	<p>Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE</p>	<p>Exhibits</p>	<p>Ruling</p>
<p>15. . . . A. ·No. 16. . . . Q. ·Do you have any opinion as to Dr. Clark's 17. ·care? 18. . . . A. ·No.</p>	<p>Dr. Stern did not relay any opinions on defendant’s care to Dr. Merritt (R. 402). Second, Dr. Merritt is not an expert in generally dentistry or an oral surgeon, and therefore has no basis to testify as to the standard of care in this case (R. 702-703). See Plaintiff’s MIL No. 64. Further, it is likely that Dr. Merritt’s testimony that he has no opinion on Dr. Clark’s standard of care would be misconstrued to imply that he is not critical of Dr. Clark’s care, which is misleading (R. 403).</p> <p>This is not misleading, as it doesn’t state any opinion on Dr. Clark’s care. Again, it is important for the jury to understand that Dr. Merritt is not an expert in dentistry and his opinions should not be relied upon in a standard of care analysis. The question about his opinions on Dr. Clark are therefore important to establish Dr. Merritt’s lack of foundation. Otherwise, Plaintiff will use Dr. Merritt’s testimony in arguments that his opinions should be used in a standard of care analysis. Only by using this testimony that Dr. Merritt is not qualified to testify on these issues or that he has no opinions on Dr. Clark’s care will the jury understand that Dr. Merritt lacks the foundation.</p> <p>As for the testimony about Dr. Stern relaying information, it is important for the jury to know what information Dr. Stern passed along to Dr. Merritt. This is a fact regarding the treatment of Plaintiff, and should therefore be allowed.</p>		<p>answers. The testimony is relevant to the scope of Dr. Merritt’s opinions.</p>
<p>23:20-24:6 20. . . . Q. ·Do you have any other opinions as to 21. ·Dr. Stern's care of Gail O'Neal? 22. . . . A. ·No. 23. . . . Q. ·Do you have any other opinions of</p>	<p>Plaintiff objects to 23:20-24:6 pursuant to Rules 702-703 and 403 of the Federal Rules of Evidence. First, it is not particularly relevant for the jury to know that Dr. Stern does not have any opinions on any other doctor’s care of plaintiff, or on the etiology of her</p>		<p>OVERRULED. The questions are appropriate given the answers. The testimony is relevant to the scope</p>

Case Name <u>O'Neal v. P.K. Clark/Whitecap Institute</u> Case Number <u>14-CV-363</u> Deposition of <u>W. Davis Merritt, M.D.</u> taken <u>Tuesday, June 23, 2015</u>			
Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
<p>24. Dr. P.K. Clark's treatment of Gail O'Neal?</p> <p>25. . . . A. No.</p> <p>1. . . . Q. Do you have any other opinions as to</p> <p>2. Dr. Michael Shane's treatment of Gail O'Neal?</p> <p>3. . . . A. No.</p> <p>4. . . . Q. And do you have any other opinions as to the</p> <p>5. etiology of Gail O'Neal's sinus disease?</p> <p>6. . . . A. No, I don't.</p>	<p>sinus disease (R. 402). Second, Dr. Merritt is not an expert in generally dentistry or an oral surgeon, and therefore has no basis to give expert opinion testimony about the treatment by dentists in this case (R. 702-703). See Plaintiff's MIL No. 64.</p> <p>As noted above, it is important for the jury to understand that Dr. Merritt lacks foundation to give opinions on the standard of care, and these questions will so demonstrate. Otherwise, Plaintiff can twist his testimony and confuse the jury into thinking that Dr. Merritt does indeed have opinions about the standard of care. This testimony will definitively state to the jury that Dr. Merritt is not qualified to testify about, and has no opinion on, the standard of care.</p> <p>In tregard to the etiology of the sinus disease, he has foundation to testify about sinus disease, as demonstrated by his credentials as an ear nose and throat specialist. His opinions (or lack thereof) on the etiology of Plaintiff's sinus disease is therefore important to the jury, and opinions (or lack thereof) on the etiology of Plaintiff's sinus disease is therefore relevant. That is a criticial issue in this case: how did the sinus disease develop and what impact did it have on the implant failure. His lack of opinions will assist the jury in making that determination.</p>		<p>of Dr. Merritt's opinions.</p>

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter-designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

- Summary Judgment Order
- Orders for Expedited Treatment of Motion [Sample 1](#) [Sample 2](#)
- Order Granting Motion to Amend
- Order Caption Document
- E-filing Proposed Orders without Motions

Ctrl+S

If you have any problem downloading these documents, try right clicking on the link and then "Save Target as."

Signature Line

<http://www.utd.uscourts.gov/chief-judge-david-nuffer>

BY THE COURT:

 David Nuffer
 United States District Judge

Trial Information and Forms

- [Criminal Trial Order](#) [Criminal Juror Questionnaire](#) [Optional Supplemental Criminal Juror Questionnaire](#) [Standard Criminal Jury Instructions](#)
- [Civil Jury Trial Order](#) [Civil Bench Trial Order](#) [Civil Advance Juror Questionnaire](#) [Civil Juror Questionnaire](#) [Sample Optional Juror Questionnaire](#)
- [Standard Civil Jury Instructions](#)
- [Final Instruction to Jurors at Discharge - Civil and Criminal Cases](#)
- [Jury Selection Procedures](#) [Jury Courtroom Seating Chart](#) [Juror Contact Order](#)
- [Deposition Designation Form](#)
- [Closing Argument Pointers](#)

Professionalism and Civility

Attorneys are encouraged to subscribe to and observe the [Utah Standards of Professionalism and Civility](#).

Employment

Judge Nuffer's staff includes one career and three term law clerks. Please check with the Case Manager about position openings.

We welcome intern assistance at all times of the year. We have enjoyed full time or part time intern assistance. We limit intern positions to students who have completed their second year of law school. Please submit a letter, resume and writing sample to dj.nuffer@utd.uscourts.gov.

Updated 02/16/2017

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>Plaintiff,</p> <p>vs.</p> <p>Defendants.</p>	<p>ORDER REGARDING JUROR CONTACT</p> <p>Case No.</p> <p>District Judge David Nuffer</p>
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[From the time the prospective jury panel was notified of the nature of this case in connection with questioning starting in [insert date], the jury, which includes jurors and alternate jurors, has not been permitted access to any news information on the case. News media have reported many matters not admitted in evidence in the trial and many matters occurring outside the presence of the jury.]

[The empaneled jury has been serving since [insert date]. During selection they were told to expect a four to five week trial, but we are now concluding the seventh week of their full time service.]

[The extended term of their service and their isolation from external sources of information recommends that members of the jury not be subjected to immediate and direct inquiry about their service. That would place additional demands on them not related directly to their important service, and would be unfair at this time as they try to resume normal life.]

Federal Rule of Evidence 606 imposes strict limitations on the admissibility of testimony by jurors. These limitations are intended to protect jurors from harassment; shield jurors from

prying questions; increase the certainty and finality of the jury's verdict; reduce the possibility of jury tampering and intimidation; and reduce the number of post-trial motions based on inadmissible evidence.

Juror contact is often sought by counsel to help improve trial skills and strategy, or by counsel and others to satisfy curiosity about the decision making process. These and other concerns are subordinate to the goals of the justice system – reaching a verdict based on admissible evidence – and to the policies expressed in the preceding paragraph.

This order imposes some limitations on jury contact as permitted by DUCivR 47-2, consistent with standing rules in many district courts.¹

IT IS HEREBY ORDERED that:

- a. No juror has an obligation to speak to any person about this case and may refuse all interviews or comments.
- b. No person may make repeated requests for interviews or questions after a juror has expressed the desire not to be interviewed, or failed to respond to a request for direct contact under paragraph e.
- c. No juror who consents to be interviewed may disclose any information with respect to the following:
 1. The specific vote of any juror other than the juror being interviewed;
 2. The opinions expressed by other jurors in deliberations;
 3. Evidence of alleged improprieties in the jury's deliberation, other than 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
- d. No person shall contact, interview, examine or question a juror, except as permitted in paragraph (e).
- e. Any person wishing to direct a communication to a juror may do so by providing a copy in an unsealed envelope with a separate written statement that the person desires the

¹ Local Civil Rule 47, W.D. Wash.; Local Criminal Rule 31, W.D. Wash.; Local Rule 47.1 D. Kan.; LRCiv 39.2, D. Az.; D.C.Colo.LCivR 47.2.

² Fed. R. Evid. 606(b)(2).

communication be sent to a juror identified by juror number, and stating the reason such contact is desired. The communication may request an opportunity for direct contact, and provide contact information for the person initiating the communication. If the court determines that the content of the communication does not violate this order, the jury administrator shall mail the communication to the juror. The jury administrator shall enclose a copy of this order with the mailed communication.

f. Any person violating this order is subject to contempt of court and other possible sanctions.

g. Any person aware of a violation of this order may file a motion or notify the jury administrator at (801) 524-6285 or utah_jury@utd.uscourts.gov.

h. This order may be reviewed and revised on motion. Motions are most likely to be successful after some time has elapsed.

Dated [insert date].

BY THE COURT:

David Nuffer
United States District Judge

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.

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 people may find you and try to speak with you.

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.** 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

The rules of evidence limit admission of any evidence about **jury deliberations** to evidence “whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror.” Nothing else about jury discussion or deliberation would be admissible in court, so I recommend

¹ *Tanner v. United States*, 107 S.Ct. 2739, 2748 (1989) (citing 96 Harv. L. Rev. at 888-892).

you not discuss jury discussions or deliberations, except you may discuss whether **outside information or influence** was improperly considered.

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.

You may of course **discuss your own feelings or reactions to evidence presented or your reaction to jury service**. And so long as you do not indirectly reveal the statements or actions of any other juror, you will not impair that special relationship that exists between jurors.

You may want to be careful about reacting to questions about your reactions to evidence or ideas that were not presented to you in trial. Your duty was to consider the evidence presented at trial.

Again thank you very much for your service.

Judge Nuffer Jury Selection

The panel enters the courtroom after orientation. The panel consists of approximately 35 in civil cases, 50 in criminal cases.

They are seated according to the attached chart, and the jury administrator delivers a list of all jurors with name, residence city and county, and employment. Jurors are seated in the order listed.

The jury is informed of the trial schedule and the length of the case and asked if the schedule or medical or other personal issues present problems.

The case summary is read, and jurors are asked if they have heard or read anything about the case.

Jurors are asked if they are acquainted with court personnel, other potential jurors, attorneys, party representatives, or witnesses.

Each juror stands in turn to read the jury questionnaire. Follow up questions are asked.

Jurors are then asked case specific voir dire and asked to write down the number of any question to which they would answer "yes."

After all questions are read, then starting with Juror Number 1, the questions to which each juror has given YES answers are reviewed and clarified. If a juror feels that an answer is sensitive, the juror may so indicate. Those answers will be obtained later, in the jury room with counsel. Follow up questions are asked.

After all public responses are reviewed, the jury is put on break while those wishing to answer privately are taken one by one to the jury room. When all private responses are made, challenges for cause and peremptory challenges are taken while counsel and the court are still in the jury room.

Returning to court, the clerk reads the names of the jurors and the rest of the panel is excused.

United States District Court for the District of Utah

Judge David Nuffer

JUROR QUESTIONNAIRE – CIVIL CASE

This is a supplemental questionnaire for a case in the United States District Court for the District of Utah. Your responses will **only** be used for jury selection purposes for this case.

IT IS HEREBY ORDERED BY THE COURT: that any recipient of this questionnaire shall not:

- Consult anyone or any source in preparation of answers.
- Disclose the contents of this questionnaire with any person.
- Research or investigate the subjects of this questionnaire.

After completing this questionnaire you will be asked to confirm your answers.

By clicking the **confirm button** at the end of the questionnaire, you are declaring under penalty of perjury and contempt of court that:

All my answers are true to the best of my knowledge and belief

I have not consulted anyone or any source in preparation of these answers

I will not disclose the contents of this questionnaire with any person

I will not research or investigate the subjects of this questionnaire

CURRENT CITY OF RESIDENCE: Please list your current city of residence and zip code.

CITIES YOU HAVE LIVED IN: Please list all the cities in Utah which you have lived, including our current city of residence. Also please include the years you lived in each city. (Example: Provo 1970-2002, Salt Lake City 2002-2017)

EDUCATION: Please tell us your highest level of education.

EDUCATION DEGREES: Please list any degrees, certificates or licenses you have received, including the year and the college or institution you received it from.

EMPLOYMENT: What is your current employment status?

EMPLOYER/SCHOOL INFORMATION: Please list the name of the business or individual that employs you and your employer's business address, if you are student please tell us where you attended school and your area of study.

WORK DUTIES: Please describe what you do at work. Does your employment experience include supervision of others? Does your employment experience include authority to hire and fire employees? If you are currently unemployed what is your customary work. If none of this applies to you just click next.

PREVIOUS EMPLOYMENT: You have already listed your current employment. If you have had previous employment what was your previous employment?

SPOUSE/PARTNER EMPLOYMENT: Please list your spouse/partner/former spouse's employment including if any, previous employment:

PRIOR JURY SERVICE: Have you ever served as a juror before?

PRIOR JURY SERVICE: If you have served as a juror previously in what year/years did you serve? If no prior jury service or experience click next.

PRIOR JURY SERVICE: If you have served as a juror previously what type of case did you serve on? Check all that apply. If no prior jury service or experience click next.

PRIOR JURY SERVICE: Please describe the case on which you served as a juror. If no prior jury service or experience click next.

PRIOR JURY SERVICE: If you served on a trial did you reach a verdict? If no prior jury service or experience click next.

PRIOR JURY SERVICE: Was your prior jury service a positive or negative experience? If no prior jury service or experience click next.

LAW ENFORCEMENT: Are you, or are any members of your family or close friends employed by a law enforcement agency?

LAW ENFORCEMENT: If you or any family members or close friends are employed by a law enforcement agency please list the agency and the years employed there. If you have no law enforcement affiliations click next.

LEGAL PROFESSION: Are you, or any members of your family or close friends employed in the legal profession?

LEGAL PROFESSION: If you or any members of your family or close friends are employed in the legal profession, please list the name of the law firm or court and their position at the firm or court. If you have no legal profession affiliations click next.

COURT EXPERIENCE: have you or any member of your family or close friends been involved in a court matter? It could have been a criminal case, civil case, divorce or

adoption. If so please describe the type of case, whether you, a family member or friend was involved in and the involvement (as a plaintiff, defendant, witness or victim).

LONG TRIAL HARDSHIP QUESTION: The trial you have been summoned for is anticipated to last four weeks. Jury selection will begin the week of September 5, 2017. The trial will begin as soon as the jury is chosen, and will last for four weeks. Are there any reasons why you would not be able to appear for jury selection on September 5th and potentially serve on a trial for four weeks? **Only undue hardship or extreme inconvenience will be considered as an excuse from the obligation of serving on this trial. If you would indeed suffer an undue hardship or extreme inconvenience please indicate and explain your hardship on the next screen. The court may ask for additional documentation to support your excuse request.**

Are there any reasons why you would not be able to appear for jury selection on September 5th and potentially serve on a trial for four weeks?

YES/No

HARDSHIP EXPLANATION

If you would not be able to serve on a trial lasting four weeks you must explain your hardship here:

If no hardship exists, click finish. TEXT ANSWER

United States District Court for the District of Utah
Judge David Nuffer
JUROR QUESTIONNAIRE - CIVIL CASE

(Please fill in and be prepared to orally present the portions in **bold** print to the Court.)

1. **My name is** _____ **and I am Juror Number** _____.

2. **I have lived in** _____ (city), **Utah since** _____ (year).

3. **I am currently employed by** _____. (If you are self employed, please tell us what you do. If you are a homemaker, please so indicate. If you are retired, please tell us what your employment was when you retired).OR If you are a student, please tell us where you attend school. **I currently attend school at** _____.

4. **I am currently** _____ (married/single/divorced/widowed/in a committed relationship/with a life partner).

5. **Those living with me at my home address include:**

Spouse/Partner _____ (name)

Children ____ (number)

Other: (specify number) _____

6. **My spouse** (or former spouse or life partner) **is employed by** _____. (If self employed, please describe. If homemaker/caregiver, please so indicate. If retired, please describe prior employment). If a student, please name the school.

7. **Others in my household, living with me are:**

(name) _____ (age) _____

(employment/school) _____

(name) _____ (age) _____

(employment/school) _____

(name) _____ (age) _____

(employment/school) _____

(name) _____ (age) _____

(employment/school) _____

8. **The ages and occupations of my children living outside my household are** (if applicable):

Age

Occupation

9. **My highest level of education is** _____ (high school, some college, college degree, post college degree - if you did not attend college, skip to question #11).

10. **My major in college is/was** _____ (if applicable).

11. **My hobbies and interest are** _____.

12. **I belong to the following clubs or organizations or volunteer with** _____ (excluding religious organizations).

13. **I like to read** _____ (what books, magazines, newspapers, etc.).

14. **I have/have not served as a juror in a previous jury trial** (if you have not served on a jury before please skip to question #17).

15. (If you have served on a jury in a criminal trial before, please answer the following)
I served on a criminal jury trial in the year _____ and the jury did/did not reach a verdict.
(If the jury reached a verdict) **The verdict was guilty/ not guilty. Generally speaking, my service on that jury was a ___positive/___negative experience.**

16. (If you have served on a jury in a civil trial before, please answer the following)
I served on a civil jury trial in the year _____ and the jury did/did not reach a verdict.
(If the jury reached a verdict) **The jury found for the plaintiff/defendant.**
Generally speaking, my service on that jury was a ___positive/___negative experience.

17. **I do/do not have a member of my immediate family who is, or know on a close personal basis, anyone in the legal profession.** (If you do have such a relative, or know such person)
The person I am related to or know is _____ and they are employed by
_____ (the law firm they are with, the government agency they are employed by, or the type of judge they are).

THANK YOU

United States District Court for the District of Utah
Judge David Nuffer
SUPPLEMENTAL JUROR QUESTIONNAIRE – CIVIL CASE

Please read these statements.

Mark statements with which you agree.

The judge may later ask you to explain those statements.

- A. I have served as a juror in a previous jury trial or as a member of a grand jury in either a federal or state court. *The judge will ask you if the trial was criminal or civil, whether the jury reached a verdict and what it was, and whether it was a positive or negative experience.*
- B. I have a member of my immediate family who is, or know on a close personal basis, anyone in the legal profession. *The judge will ask you the name of this person, who they work for and what type of work they do.*
- C. I have been involved, in any court, in a civil lawsuit (other than a divorce proceeding) that concerned myself, any member of my family, or a close friend, either as a plaintiff, a defendant, or a witness. *The judge will ask you about the case.*
- D. A close friend or family member works in the insurance, real estate, title insurance, mortgage or escrow business. *The judge will ask you to explain the person and position and give the company's name.*
- E. I, a close friend or family member, have used the services of a title insurance or escrow company recently. *The judge will ask you to explain the context and give the company's name.*
- F. I, a close friend or family member, have had a negative experience with a title insurance or escrow company.
- G. I have been accused of breaching a contract.
- H. I, a close friend or family member have been involved in a serious dispute or lawsuit with an employer.
- I. I now have or have had a written employment agreement or worked for a company with policies and procedures that imposed obligations of confidentiality, restrictions on my ability to compete with my employer after employment ended, or restrictions on my ability to solicit my employer's other employees after I leave my employment.
- J. I, a close friend or family member, have been involved in a dispute or lawsuit concerning non-competition, non-solicitation, or confidentiality agreements.
- K. I have strong opinions in favor of or against non-competition, non-solicitation, or confidentiality obligations imposed on employees by employers.
- L. There is something else that I have not disclosed that might prevent me from being fair and impartial.
- M. I have another reason that may mean I should not serve on this jury.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>BIMBO BAKERIES USA, INC., Plaintiff, v. LELAND SYCAMORE and UNITED STATES BAKERY, Defendants.</p>	<p>SPECIAL VERDICT Case No. 2:13-cv-00749-DN-DBP District Judge David Nuffer</p>
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MEMBERS OF THE JURY:

When filling out this Special Verdict form, please follow the directions provided throughout the form. Read the questions and directions carefully. They explain the sequence in which the questions should be answered.

Your answer to each question must be unanimous.

Except where indicated, your findings are by a preponderance of the evidence.

Some of the questions contain legal terms that are defined and explained in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions.

FALSE ADVERTISING

- 1. Has US Bakery engaged in false advertising by using the words “Fresh. Local. Quality.” in connection with the advertising or promotion of its products?**

Answer “Yes” or “No” yes

If your answer is “Yes,” then go to Questions No. 2 and 3. If your answer is “No,” then continue to the questions under “Trade Secret Misappropriation.”

- 2. If you answered “Yes” to Question No. 1, did Bimbo Bakeries suffer actual damages as a result of the false advertising?**

Answer “Yes” or “No” yes

3. If you answered "Yes" to Question No. 1, do you find that US Bakery's false advertising was willful?

Answer "Yes" or "No" yes

If you answered "No" to Question No. 2 and to Question No. 3, then continue to the questions under "Trade Secret Misappropriation." If you answered "Yes" to either Question No. 2 or Question No. 3, then go to Question No. 4.

4. If you answered "Yes" to either Question No. 2 or Question No. 3, what amount of profits did US Bakery receive as a result of its false advertising?

Amount \$ 8,027,720

Continue on to answer the questions under Trade Secret Misappropriation.

TRADE SECRET MISAPPROPRIATION

1. Does Bimbo Bakeries have a protectable trade secret?

Answer "Yes" or "No" yes

If your answer is "Yes," then go to Question 2. If you answered "No," go to the Certification at the end of this form and have the foreperson sign and date this form.

2. Have the defendants misappropriated a trade secret of Bimbo Bakeries?

Answer as to each of the defendants:

US BAKERY

Answer "Yes" or "No" yes

LELAND SYCAMORE

Answer "Yes" or "No" yes

If your answer is "Yes" for any defendant, then go to Question No. 3. If you answered "No" for all defendants, go to the Certification at the end of this form and have the foreperson sign and date this form.

3. **What amount of damages, if any, has Bimbo Bakeries suffered as a result of the misappropriation of the trade secret?**

Amount \$2,105,256

If you found Bimbo Bakeries has suffered damages as a result of the misappropriation of the trade secret, then go on to Question No. 4. If you found Bimbo Bakeries has not suffered damages as a result of the misappropriation of the trade secret, go to the Certification at the end of this form and have the foreperson sign and date this form.

4. **Of the total amount of damages, for how much is each defendant responsible?**

Do not fill in an amount for any defendant for which you answered "No" in Question No. 2.

US BAKERY

LELAND SYCAMORE

Amount \$1,578,942

Amount \$526,314

Go on to Question No. 5.

5. **For each defendant for which you answered "Yes" in Question No. 2, do you find by clear and convincing evidence that the trade secret misappropriation was willful and malicious?**

US BAKERY

Answer "Yes" or "No" yes

LELAND SYCAMORE

Answer "Yes" or "No" no

If your answer is "No" for any defendant for which you answered "Yes" in Question No. 2, then go to Question No. 6. Otherwise, go to the Certification at the end of this form and have the foreperson sign and date this form.

6. For each defendant for which you answered "No" in Question No. 5, do you find *by the preponderance of the evidence* that the trade secret misappropriation was willful and malicious?

US BAKERY

Answer "Yes" or "No" _____

LELAND SYCAMORE

Answer "Yes" or "No" yes

INSTRUCTIONS

After you have completed the questions as directed above, the Jury Foreperson is to date and sign this Special Verdict Form on behalf of the jury and notify the Court Security Officer that you have reached a verdict.

CERTIFICATION

We, the jury, unanimously agree to the answers to the foregoing questions and return this form as our verdict in this case.

The verdict is not final until accepted by the court.

DATED this 6th of October 2017.

Mary M Abbott
Jury Foreperson