PRELIMINARY INSTRUCTION NO.

MEMBERS OF THE JURY:

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

It will be your duty to find the facts from the evidence presented in court. I will give you detailed instructions at the conclusion of the evidence on the law, the required proof, and how you should proceed to reach a verdict. Nothing I may say or do during the course of the trial is intended to indicate that I have any opinion about the facts of this case nor should anything I say or do be taken as indicating what your verdict should be.

PRELIMINARY INSTRUCTION NO. 2

This is a civil lawsuit. The parties who are bringing a lawsuit are called “plaintiffs,” while the parties being sued are called “defendants.” To help you understand what you will see and hear, I will now explain the background of the case.

[Provide brief background of the case.]

The defendant denies liability for the plaintiff’s [injuries/damages].

PRELIMINARY INSTRUCTION NO. 3

This lawsuit was brought by plaintiff [insert plaintiff(s) name.]

The defendant(s) being sued in this case [is/are] [insert defendant’s name.]

[If there are two or more defendants, also insert the following:

Although there are [insert number of defendants] defendants, that does not mean that they are equally liable or that any of them are liable. Each defendant is entitled to a fair consideration of its defense against the plaintiff’s claims. If you conclude that one defendant is liable, that does not necessarily mean that the other defendants are also liable.]

I will now describe the basic elements the plaintiff must prove against [the defendant/ each of the defendants]. These preliminary instructions are meant to provide you guidance as the evidence is presented. As I indicated, I will give additional and more detailed instructions at the conclusion of evidence.

PRELIMINARY INSTRUCTION NO. 3-A

To find [insert defendant(s) name] is liable for [insert cause of action], you must be convinced that the plaintiff has proved each of the following elements by a preponderance of the evidence:

First: [state first element]; and

Second: [state second element].

Note: Repeat these steps until all of the elements have been stated. If there is more than one cause of action, repeat this instruction for each remaining cause of action.

PRELIMINARY INSTRUCTION NO. 4

A moment ago, I said that plaintiff has the burden of proving the plaintiff’s case by a preponderance of the evidence. That means the plaintiff must produce evidence that, considered in the light of all the facts, leads you to believe that what the plaintiff claims is more likely true than not. To put it differently, if you were to put plaintiff’s and defendant’s evidence on opposite sides of the scales, the plaintiff would have to make the scales tip toward the plaintiff’s side. If the plaintiff fails to meet this burden, the verdict must be for the defendant.

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

PRELIMINARY INSTRUCTION NO. 5

It is my role to supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also instruct you on the law that you must apply.

The order in which I give these instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction and neither should you.

The instructions that I give you are the law, and your oath requires you to follow my instructions even if you disagree with them.

PRELIMINARY INSTRUCTION NO. 6

It is the lawyers’ role to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his or her client.

Things that you see on television and in the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy, and civility.

PRELIMINARY INSTRUCTION NO. 7

It will be your role to find from the evidence what the facts are. The facts generally relate to who, what, when, where, why, and how. The facts must be supported by the evidence. Neither the lawyers nor I decide the facts. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as I will give it to you. Again, your oath as jurors requires that you must follow that law whether you agree with it or not.

Nothing I may say or do during the course of the trial is intended to indicate nor should be taken by you as indicating what your verdict should be.

PRELIMINARY INSTRUCTION NO. 8

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

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

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

2. Objections to questions are not evidence. Lawyers make objections when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by an objection or by my ruling on it. If the objection is sustained, you must ignore the question that was asked before the objection. If the objection is overruled, you may consider the answer as evidence.

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

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

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

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

PRELIMINARY INSTRUCTION NO. 9 (IF APPLICABLE)

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

But you are not bound by such an opinion. You should weigh expert opinion testimony just as you weigh any other testimony.

PRELIMINARY INSTRUCTION NO. 10

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

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, you think it deserves. You may believe or disbelieve all or any part of any witness’s testimony.

PRELIMINARY INSTRUCTION NO. 11

You must come to the case without bias. You must not decide this case for or against anyone because you feel sorry for anyone or angry at anyone. You must decide this case based on the facts and the law, without regard to sympathy, passion, or prejudice.

[If the plaintiff is a natural person and the defendant is a business entity, also insert the following:

The fact that the plaintiff is a natural person and the defendant is a [corporation/company/partnership] should not play any part in your deliberations. You must decide this case as if it were between individuals.]

PRELIMINARY INSTRUCTION NO. 12 (IF APPLICABLE)

The plaintiff and the defendant have stipulated—that is they have agreed—to certain facts. Therefore, you must treat these facts as conclusively proven. I will now read the stipulated facts:

[INSERT STIPULATED FACTS]

PRELIMINARY INSTRUCTION NO. 13

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

PRELIMINARY INSTRUCTION NO. 14

If you would like to take notes during the trial, you may, but you are not required to do so. If you decide to take notes, be careful not to get so involved in note taking that you become distracted. Also, remember that your notes will not necessarily reflect exactly what was said.

Your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors.

If you do take notes, you must leave them in the jury room at night and not discuss the content of your notes until you begin deliberations. Any notes taken by any juror concerning this case should not be disclosed to anyone other than a fellow juror and at no other time than during deliberation.

PRELIMINARY INSTRUCTION NO. 15

The court reporter is making stenographic notes of everything that is said. The purpose is to have an accurate record of the proceeding and to assist any appeals. But this record will not be available for your use during deliberations.

PRELIMINARY INSTRUCTION NO. 16

During the trial it may be necessary for me to discuss legal matters with the lawyers out of your hearing, either by having a conference here at the bench while you are present in the courtroom, or by calling a recess. The length of these conferences may vary. Please understand that while you are waiting, we are working. Also, please do not speculate as to what we are discussing or why we are having these discussions.

PRELIMINARY INSTRUCTION NO. 17

Now to your conduct as jurors. These instructions may seem odd, but they are critically important, because if you violate these rules the trial and your verdict may be invalid.

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

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

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

Fourth, do not try to do any research or make any investigation about the case on your own. This means you must not consult any person or source, including internet resources, on subjects related to this case. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, tablets or any social media or electronic device. This also includes visiting any of the places involved in this case, using Internet maps or Google Earth or any other source, talking to possible witnesses, or creating your own experiments or reenactments.

Fifth, when family, friends, colleagues, or anyone else asks what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over. This includes every form of communication you can imagine, including not just speaking, but emails, text messages, tweets, blogs, chat room discussions, comments or other postings, Facebook, Twitter, Instagram, LinkedIn, or any other social media of any kind.

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

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

PRELIMINARY INSTRUCTION NO. 18

You must keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

PRELIMINARY INSTRUCTION NO. 19

The trial will generally proceed as follows:

1. Opening Statements. The lawyers will make opening statements, outlining what the case is about and what they think the evidence will be. Opening statements are neither evidence nor arguments. They are a road map to show you what is ahead.

2. Presentation of Evidence. The plaintiff(s) will then present their witnesses and other evidence. The defendant(s) may cross-examine those witnesses. Following the plaintiff(s)’ case, the defendant(s) will present witnesses and other evidence. The plaintiff(s) may cross-examine those witnesses. The parties may later offer more evidence (called rebuttal evidence) after hearing the witnesses and seeing the exhibits.

3. Instructions on the Law. After all the evidence is in, I will instruct you on the law that you must apply.

4. Closing Arguments. Next, the lawyers will summarize and argue the case. They will share with you their views of the evidence, how it relates to the law, and how they think you should decide the case.

5. Jury Deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict.

The trial will begin Monday, \_\_\_\_\_\_, at 9 a.m. Please be here by 8:45 a.m. so that we may begin on time.

Thank you for your attention as I have provided these instructions. And again, thank you for your willingness to participate in this vital civic service.