

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.: \_\_\_\_-cv-\_\_\_\_-MEH

\_\_\_\_\_,'

Plaintiff,

v.

\_\_\_\_\_,'

Defendant.

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**CLOSING JURY INSTRUCTIONS**

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**INSTRUCTION NO. 18**

Introduction to Closing Instructions

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it. You must apply the law to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law. Instead, consider the instructions as a whole. Do not be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and the law as stated in these instructions, you must follow my instructions.

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

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, bias, prejudice, or public opinion. All parties

expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

## **INSTRUCTION NO. 19**

### Use of Notes

You may use the notes you took during the trial. Your notes should be used only as aids to your memory, and if your memory should later be different, you should rely on your memory and not your notes.

## **INSTRUCTION NO. 20**

### **Burden of Proof**

“Burden of proof” means the obligation a party has to prove his claims. This is a civil case. Therefore, Plaintiff has the burden of proving his claims by what is called “a preponderance of the evidence.” That means that no matter who produces the evidence, when you consider Plaintiff’s claims in light of all the facts, you believe that his claims are more likely true than not true. To put it differently, if you were to put Plaintiff’s and Defendant’s evidence on opposite sides of the scales, Plaintiff would have to make the scale tip on his side. If Plaintiff fails to meet this burden on any of his claims, your verdict must be for Defendant on that claim.

## **INSTRUCTION NO. 21**

### **Probabilities and Evidence**

Any finding of fact you make must be based on probabilities, not possibilities. You should not guess or speculate about a fact.

Evidence may be either direct or circumstantial. Circumstantial evidence is the proof of facts or circumstances from which the existence or nonexistence of other facts may reasonably be inferred. "Inferences" are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case. All other evidence is direct evidence. The law makes no distinction between the effect of direct evidence and circumstantial evidence.

## **INSTRUCTION NO. 22**

### Evidence in the Case

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received in evidence regardless of who may have produced them, and all facts and events that have been stipulated to or judicially noticed.

The lawyers have highlighted certain parts of some exhibits. However, it is for you to determine the significance of the highlighted parts.

Statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you understand the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, unless otherwise instructed, you must accept the stipulation and regard that fact as proved. When I declare that I will take judicial notice of some fact or event, you must accept that fact as true.

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded. In addition, if I have allowed some testimony or exhibits only for a limited purpose, you must consider such only for that limited purpose.

Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received during trial.

## **INSTRUCTION NO. 23**

### Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness' opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness' memory; the witness' appearance and manner while testifying; the consistency or lack of consistency in the witness' testimony; the witness' interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness' testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend on the number of witnesses who testify.

You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you should decide the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude the reasons given in support of the opinion are not sound, or if you feel that the expert's opinion is outweighed by other evidence, you may disregard the opinion in whole or in part.

**INSTRUCTION NO. 24**

Statement of the Case

The parties to this case are \_\_\_\_\_, the Plaintiff, and \_\_\_\_\_,  
the Defendant.

**[INSERT STATEMENT OF PLAINTIFF’S CASE]**

**[INSERT STATEMENT OF DEFENDANT’S DISPUTE(S)]**

These are the issues you are to decide.



**INSTRUCTION NO. 25**

Stipulated Facts

At the outset of the case, the Parties stipulated to the following facts:

**1. [INSERT STIPULATED FACTS]**

Since the parties have stipulated to these facts and do not dispute them, you are to take these facts as true for purposes of this case.

**INSTRUCTION NO. 26**

Introduction to Causes of Action

Plaintiff sues Defendant on \_\_\_ different claims for relief: (1) \_\_\_\_\_ and (2) \_\_\_\_\_.

In determining Plaintiff's recovery of \_\_\_\_\_, you may consider all evidence of damages caused by \_\_\_\_\_ occurring on \_\_\_\_\_.

However, in determining liability and damages for Plaintiff's \_\_\_\_\_, you may consider only the conduct of the parties that occurred before \_\_\_\_\_, when the lawsuit was filed. In determining these claims, you cannot, and it would be improper for you to, speculate as to any conduct of either party after the lawsuit was filed, or to infer one way or the other as to conduct occurring outside that time period. Any such conduct is irrelevant and outside the scope of these claims.

**INSTRUCTION NO. 27**

Elements of \_\_\_\_\_ Claim

For Plaintiff to recover from Defendant on his claim for \_\_\_\_\_, you must find Plaintiff has proven all of the following by a preponderance of the evidence:

1. **[INSERT ELEMENTS]**.

If you find that either of these elements has not been proven, then your verdict on this claim must be for Defendant \_\_\_\_\_.

On the other hand, if you find that both elements have been proven, then your verdict must be for Plaintiff \_\_\_\_\_ on this claim.

## **INSTRUCTION NO. 28**

### **“Cause” Defined**

The words “cause” or “caused by” as used in these instructions mean an act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have happened.

**INSTRUCTION NO. 29**

\_\_\_\_\_’s Corporate Status

Defendant, \_\_\_\_\_, is a corporation and can act only through its officers and employees. Any act or omission of an officer or employee while acting within the scope of employment is the act or omission of the Defendant corporation. Likewise, \_\_\_\_\_ is considered to know or have notice of information if any of its officers and employees, while acting within the scope of their authority, learns or receives notice of the information.

### **INSTRUCTION NO. 30**

#### All Persons Equal Before the Law - Organizations

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations, stand equal before the law and are to be treated as equals.

## **INSTRUCTION NO. 31**

### Attorney's Acts Imputed to Client

An attorney is an agent of the client while acting within the course of the particular transaction for which the attorney is retained. The client is considered to know or have notice of information and the acts of the attorney are imputed to the client, if the attorney, while acting within the course of the particular transaction for which the attorney was retained, learns or receives notice of the information, or takes actions on the client's behalf.

**INSTRUCTION NO. 32**

Introduction to Damages Instructions

Plaintiff has the burden of proving, by a preponderance of the evidence, the nature and extent of his damages. In determining such damages, you shall consider the following:

1. **[INSERT DAMAGES CONSIDERATIONS]**



**INSTRUCTION NO. 33**

Damages for Each Claim

Plaintiff sues Defendant for injuries and losses on \_\_\_\_\_ different claims for relief: (1) \_\_\_\_\_ and (2) \_\_\_\_\_.

In the following instructions, the Court will define how you are to separately determine damages for each of these \_\_\_ claims.

**INSTRUCTION NO. 34**

Damages for \_\_\_\_\_ Claim

Plaintiff has the burden of proving, by a preponderance of the evidence,  
\_\_\_\_\_. If you find in favor of Plaintiff on his claim for  
\_\_\_\_\_ under Instruction No. \_\_\_\_, you must determine the total dollar  
amount of \_\_\_\_\_.

**INSTRUCTION NO. 35**

Difficulty in Determining Damages

Difficulty or uncertainty in determining the precise amount of any damages does not prevent you from deciding an amount. You should use your best judgment based on the evidence.

## **INSTRUCTION NO. 36**

### Instruction on Damages Does Not Mean Valid Claim

The fact that the Court has instructed you on the measure of damages does not mean that the Court is instructing you to award or not to award damages. The question of whether or not damages are to be awarded is a question for your consideration.

## **INSTRUCTION NO. 37**

### Duty to Deliberate

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 disregard of individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. During your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. However, do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

**INSTRUCTION NO. 38**

Exhibits and Jury Room

The original forms of the written instructions and the exhibits are a part of the Court's record. Do not place any marks or notes on them. (The instructions labeled "copy" may be marked or used in any way you see fit.)

## **INSTRUCTION NO. 39**

### Election of Foreperson

When you go to the jury room, you must first select a foreperson. The foreperson will preside over your discussions and speak for you here in Court. It is the responsibility of the foreperson to encourage good communication and participation by all jurors and to maintain fairness and order. Your foreperson should be willing and able to facilitate productive discussions even when disagreements and controversy arise.

The foreperson should let each of you speak and be heard before expressing his or her own views.

The foreperson should never attempt to promote nor permit anyone else to promote his or her personal opinions by coercion or intimidation or bullying of others.

The foreperson should make certain that the deliberations are not rushed to reach a conclusion.

If the foreperson you select does not meet these standards, he or she should voluntarily step down or be replaced by a majority vote.

After you select a foreperson, you should consider electing a secretary who will tally the votes, help keep track of who has or has not spoken on the various issues, make certain that all of you are present whenever deliberations are under way, and otherwise assist the foreperson.

Some juries are tempted at this point to hold a preliminary vote on the case before them to “see where we stand.” It is most advisable, however, that no vote be taken before a full discussion is had on the issue to be voted on; otherwise, you might lock yourself into a certain view before considering alternative, and possibly more reasonable, interpretations of the evidence. Experience

has also shown that such early votes frequently lead to disruptive, unnecessarily lengthy, inefficient debate and ineffective decision-making.

Instead, I suggest the foreperson begin your deliberations by directing the discussion to establishing informal ground rules for how you will proceed. These rules should assure that you will focus on, analyze, and evaluate the evidence fairly and efficiently and that the viewpoints of each of you are heard and considered before any decisions are made. No one should be ignored. You may agree to discuss the case in the order of the questions presented in the Jury Verdict Form, in chronological order, or according to the testimony of each witness. Whatever order you select, however, it is advisable to be consistent and not jump from one topic to another.

To move the process of deliberation along in the event you reach a controversial issue, it is wise to pass it temporarily and move on to the less controversial ones and then come back to it. You should then continue through each issue in the order on which you have agreed unless a majority of you agrees to change the order.

It is very helpful, but certainly not required of you, that all votes are taken by secret ballot. This will help you focus on the issues and not be overly influenced by personalities. Each of you should also consider any disagreement you have with another juror or jurors as an opportunity for improving the quality of your decision and, therefore, should treat each other with respect. Any differences in your views should be discussed calmly and, if a break is needed for that purpose, it should be taken. Each of you should listen attentively and openly to one another before making any judgment. This is sometimes called “active listening” and it means that you should not listen with only one ear while thinking about a response. Only after you have heard and understood what the other person is saying should you think about a response. Obviously, this means that, unlike TV talk shows, you should try very hard not to interrupt. If one of you is going on and on, it is the



foreperson who should suggest that the point has been made and it is time to hear from someone else.

You each have a right to your individual opinion, but you should be open to persuasion. When you focus your attention and best listening skills, others will feel respected and, even while they may disagree, they will respect you. It helps if you are open to the possibility that you might be wrong or at least that you might change your mind about some of the issues after listening to other views.

Misunderstanding can undermine your efforts. Seek clarification if you do not understand or if you think others are not talking about the same thing. From time to time the foreperson should set out the items on which you agree and those on which you have not yet reached agreement.

In spite of all your efforts, it is indeed possible that serious disagreements may arise. In that event, recognize and accept that “getting stuck” is often part of the decision-making process. It is easy to fall into the trap of believing that there is something wrong with someone who is not ready to move toward what may be an emerging decision. Such a belief is not helpful. It can lead to focusing on personalities rather than the issues. It is best to be patient with one another. At such times, slower is usually faster. There is a tendency to set deadlines and seek to force decisions. Providing a break or more time and space, however, often helps to shorten the overall process.

You may wish from time to time to express your mutual respect and repeat your resolve to work through any differences. With such a commitment and mutual respect, you will most likely render a verdict that leaves each of you satisfied that you have indeed rendered justice.

## **INSTRUCTION NO. 40**

### Use of Electronic Communication Technologies

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a cell phone, smart phone, smart watch, computer, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Instagram, TikTok, Facebook, LinkedIn, YouTube, or X (formerly known as “Twitter”), to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can discuss the case only in the jury room with your fellow jurors during deliberations. I expect you will inform me if you become aware of another juror’s violation of these instructions.

You may not use these electronic means to investigate or communicate about the case, because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. You are permitted to discuss the case with your fellow jurors during deliberations, only because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you, and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

## **INSTRUCTION NO. 41**

### Communications with Court

If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by your foreperson. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject touching the merits of the case other than in writing, or orally here in open court. I will respond as soon as possible either in writing or orally in open court. Bear in mind also that you are never to reveal to any person—not even to me—how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

From the oath about to be taken by the Court Security Officer you will note that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

If you send a note to me containing a question or request for further direction, please bear in mind that responses take considerable time and effort. Before giving an answer or direction, I must first notify counsel and bring them back to the courtroom. I must confer with them, listen to arguments, research the legal authorities, if necessary, and reduce the answer or direction to writing.

There may be a question that, under the law, I am not permitted to answer. If it is improper for me to answer the question, I will tell you that. Please do not speculate about what the answer to your question might be or why I am not able to answer a particular question.

In some instances, jurors request that certain testimony be read to them. This cannot be done as it is inappropriate for the Court to single out testimony. In those circumstances you must rely on your own recollections.

## **INSTRUCTION NO. 42**

### Reaching a Verdict

It is your duty to find the facts from all the evidence in the case. To those facts, you must apply and follow the law as I give it to you whether you agree with it or not. You must base your verdict on the evidence. You are not allowed to do any research of any kind about this case, including looking at, reading, consulting, or using any material of any kind such as newspapers, magazines, television and radio broadcasts, dictionaries, medical, scientific, technical, religious, or law books or materials. You are not allowed to visit any place mentioned in the evidence. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means you must decide the case solely on the evidence before you and according to the law as I give it to you. You have taken an oath promising to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions, or into anything I may say or do, any suggestions as to what verdict you should return. Your verdict is a matter entirely for you to decide.

Your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

## **INSTRUCTION NO. 43**

### Jury Verdict Form

You will receive a document called a Jury Verdict Form. The verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict[s], your foreperson will fill in the form, sign and date it, and advise the Court Security Officer that you are ready to return to the courtroom.

You are instructed to answer the questions in the Jury Verdict Form as directed in that form. You must reach unanimous agreement on the answers to each of the questions you are directed in the form to answer. On arriving at an agreement, your foreperson will insert each answer on the Jury Verdict Form, then your foreperson will date the Jury Verdict Form, sign it, and ask all of the other jurors to sign it.

Each of the questions calls for a “Yes” or “No” answer or a monetary value. The response to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question.

After you have filled out the Jury Verdict Form in this manner, your foreperson should advise the Court Security Officer stationed outside the jury room that you have reached a verdict.