IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: ___-cv-_____-MEH

_____,

Plaintiff,

v.

_____,

Defendant.

OPENING JURY INSTRUCTIONS

INSTRUCTION NO. 1

Jury Conduct

We are about to start the trial of the case you heard about during jury selection. Before the trial begins, I am going to give you instructions that will help you to understand what will be presented to you and how you should conduct yourself. These are preliminary instructions about jury conduct and the law. These may not be exactly the same as the final instructions about the law you will be given at the end of the case to use in your deliberations. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case. You should not be concerned about any difference between the preliminary instructions and the final instructions.

Your job will be to decide this case based solely on the evidence presented during the trial and the instructions that I will give you. You will not be investigators or researchers, so do not attempt to gather any information about this case on your own.

Do not talk with *one another* about this case or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict.

Do not talk with *anyone else* about this case or about anyone who has anything to do with it until the trial has ended and you have been discharged as jurors. This includes the lawyers in this matter. "Anyone else" also includes members of your family and your friends, whether in person or by telephone, cell phone, smart phone, computer, Internet, or other means of communication. You will receive a juror badge so when you are in the courthouse people will know you are a juror. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone tries to talk to you, please report it to me immediately.

When Court is not in session, you may communicate about anything other than this case. You may tell others that you are a juror in a case and that I have ordered you not to tell them anything else about the case until I have discharged you. You may tell them the estimated schedule of your jury duty, but do not tell them anything else about the case. If anyone tries to communicate with you about anything concerning the case, you must stop the communication immediately and report it to my Courtroom Deputy who will notify me.

Do not read or do research about the trial, the case, the issues in this case, or anyone who has anything to do with the case from any other source or electronic tool, including the Internet; podcasts or television or radio broadcasts; newspapers, magazines, or any other publications; consulting dictionaries; religious books or materials; law books; or other reference materials. Please do not try to find out information from any source outside the confines of this courtroom.

I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, smart watches, tablets, the Internet, and other forms of technology. You may have your smart watch turned on when Court is in session or while you are deliberating only if it is in

airplane mode or otherwise disconnected from receiving news alerts and phone calls or texts. You may not, under any circumstances, have your smart phones, tablets, or other electronic devices turned on when Court is in session or while you are deliberating. Additionally, you must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes communication through e-mail, text messaging, X (formerly known as "Twitter"), Instagram, TikTok, Facebook, or by way of any other social networking websites. Researching or gathering any information on your own that you think might be helpful is against the law and would violate your oath.

Violation of this instruction could cause a mistrial, meaning all of our efforts over the course of the trial would be wasted and we would have to start over again before a new jury. If you were to cause a mistrial by violating this order, you could be required to pay the costs of these proceedings, and you could also be punished for contempt of court.

[IF APPLICABLE] You are not allowed to visit any place involved in this case. If you normally travel through such a place, you should try to take a different route until I tell you that your jury service is completed. If you cannot take a different route, you must not stop or attempt to gather any information from that location.

Do not make up your mind about what the verdict should be until after you have retired to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then. If you need to tell me something, simply give a signed note to my Courtroom Deputy to give to me.

Finally, each of you will be given a notebook. Please write your name on your notebook. You are free to take notes to enhance your memory or assist you in recollecting during your

deliberations. However, you are not required to do so. Let me advise you of certain things concerning notetaking:

1. Each of you may take notes, but you are not required to do so.

2. If you take notes, do not try to summarize all of the testimony. Notes are for the purpose of refreshing your memory. Whether you take notes or not, you should rely on your memory as much as possible and not upon your notes or the notes of other jurors.

3. Be brief in taking notes. Over-indulgence in notetaking may be distracting. You, the jurors, must determine the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in passing on his or her credibility. Notetaking must not distract you from that task. If you wish to take notes, you need not sacrifice the opportunity to make important observations.

4. Your notes are for your private use only. Do not use your notes, or other jurors' notes, as authority to persuade fellow jurors. In your deliberations, give no more and no less weight to the view of a fellow juror because that juror did or did not take notes. Your notes are not official transcripts. You are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

5. You may only use your notes in the courtroom or jury deliberation room. However, these materials may not be taken anywhere else. At the end of each day, please leave your notebook in the jury deliberation room. The jury deliberation room will be locked by my Courtroom Deputy at the conclusion of each day when you leave, and unlocked before you arrive and proceedings begin in the morning. At the conclusion of the case, a court officer will collect and destroy your notes to protect the secrecy of your deliberations.

INSTRUCTION NO. 2

Case Presentation

During the trial you will hear me use a few terms that you may not have heard before. Let me briefly explain some of the most common to you. As I previously stated, the party who sues is called the "Plaintiff." In this action, the Plaintiff is _____. The individual or entity the Plaintiff sues is called the "Defendant." In this case, the Defendant is _____.

You will sometimes hear me refer to "counsel." "Counsel" is another way of saying "lawyer" or "attorney." I will sometimes refer to myself as the "Court."

By your verdict, you will decide disputed issues of fact. I will decide all questions of law that arise during the trial. Before you begin your deliberation at the close of the case, I will instruct you in more detail on the law that you must follow and apply.

Because you will be asked to decide the facts of this case, you should give careful attention to the testimony and evidence presented. Keep in mind that I will instruct you at the end of the trial about determining credibility or believability of the witnesses. During the trial you should keep an open mind and should not form or express any opinion about the case until you have heard all of the testimony and evidence, the lawyers' closing arguments, and my instructions to you on the law.

From time to time during the trial, I may make rulings on objections or motions the lawyers make. All rulings I am required to make will be based solely on the law. It is a party's duty to object when the other side offers testimony or other evidence that the party believes is inadmissible. You should not be unfair or partial against a lawyer or the lawyer's client, because the party has made objections. If I sustain an objection to any evidence or strike any evidence, you must disregard that evidence. If I sustain or uphold an objection to a question that goes unanswered

by the witness, you should not draw any inferences or conclusions from the question. If I sustain or uphold an objection to a question that has been answered, you must not draw any inferences or conclusions from the answer. If I overrule an objection to any evidence, you must not give that evidence any more weight than if the objection had not been made. You should not infer or conclude from any ruling or other comment I make that I have any opinions on the merits of the case favoring one side or the other. I do not favor one side or the other.

When I "sustain" an objection or "strike" evidence, I am excluding that evidence from this trial for a good reason. When you hear that I have "overruled" an objection, I am permitting that evidence to be admitted.

When I say, "admitted into evidence" or "received into evidence," I mean that this particular statement or exhibit may be considered by you in making the decisions you must make at the end of the case.

During recesses and adjournments of Court, you will be free to separate, eat lunch, and go home at the end of the day. During these times, you are not to discuss this case with one another or anyone else.

The lawyers and parties are not allowed to speak with you during this case. When you see them at recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law. Similarly, you must not talk with any of the witnesses in this case or representatives of the media until after you have reached your verdict and have been discharged by the Court as jurors in this case. Additionally, while the trial is in progress, you must not discuss the case in any manner among yourselves or with anyone else. Neither should you permit anyone to discuss the case in your presence.

During the trial, it may be necessary for me to talk with the parties out of your hearing about questions of law or procedure. Sometimes, you may be excused from the courtroom during these discussions. This may cause delay. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

INSTRUCTION NO. 3

Burden of Proof

"Burden of proof" means the obligation a party has to prove their claims. The party with the burden of proof can use evidence produced by any party to persuade you. Plaintiff, _____, has the burden of proof in this civil action, which requires him to prove every essential element of his claims by a preponderance of the evidence.

"Establish by a preponderance of the evidence" means evidence which, as a whole, shows that the fact sought to be proved is more probable than not. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your mind's belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence, unless otherwise instructed, you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them. If Plaintiff fails to meet his burden of proof as to any claim, or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must reject that claim.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard applicable in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 4

Lawsuit Does Not Mean Valid Claim

The fact that a plaintiff files a lawsuit is not evidence that the other party did anything wrong. The fact that Plaintiff complains that he has been damaged is not evidence that he has been damaged or that the other party violated the law. The fact that a case has gone to trial does not mean that it must have some merit. You cannot say, "Well, there must be something wrong here or the case would not be in Court." That would be improper.

INSTRUCTION NO. 5

Evidence in the Case

It will be your duty to decide what the facts are from the evidence the parties present. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law I give you. That is how you will reach your verdict. In doing so, you must follow the law as I inform you, whether you agree with it or not.

At no time during the trial will I suggest what I think your verdict should be, nor do I want you to guess or speculate about my views of what verdict you should render.

The evidence in the case will consist of the following:

1. The sworn testimony of the witnesses, no matter which party calls the witness.

2. All exhibits received in evidence, regardless of which party produces the exhibits.

3. All facts that have been stipulated or judicially noticed, which you must take as true for purposes of this case.

A "stipulation" is an agreement between both sides that certain facts are true. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved. Questions and objections by the lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by an objection or by my ruling on it.

I may take judicial notice of certain facts or events. When I declare that I will take judicial notice of some fact or event, you must accept that fact as true.

The following things are **not** evidence, and you must not consider them as evidence in deciding the facts of this case:

Statements and arguments of the lawyers are not evidence in the case, unless made as an admission or stipulation of fact. If a lawyer asks a witness a question containing an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and you must not consider it. In addition, I may allow some testimony or exhibits only for a limited purpose, and you must consider such only for that limited purpose.

Anything you may see or hear when the Court is not in session is not evidence, even if what you see or hear is done or said by one of the parties or witnesses. You are to decide the case solely on the evidence received in this courtroom during the trial.

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses. You may draw from the facts you find have been proved such reasonable inferences as seem justified in light of your experience. "Inferences" are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO. 6

Direct and Circumstantial Evidence

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness who asserts or claims to have actual knowledge of a fact. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts and circumstances which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved. By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence of this case.

INSTRUCTION NO. 7

Exhibits

The lawyers may highlight certain parts of some exhibits. It is for you to determine the significance of the highlighted parts.

INSTRUCTION NO. 8

Credibility of Witnesses

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence contrary to the testimony.

You should carefully examine all the testimony given, the circumstances under which each witness has testified, and every matter in evidence tending to show whether a witness is worthy of belief. Consider each witness' intelligence; motive and state of mind; bias, prejudice, or interest, if any; and demeanor or manner while testifying.

Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Also, consider any relation each witness may have with either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which the testimony of each witness is consistent or inconsistent, reasonable or unreasonable, or supported or contradicted by other evidence in the case.

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 seeing an event may see or hear it differently.

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, that you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

In addition, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

INSTRUCTION NO. 9

All Available Witnesses or Evidence Need Not be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

INSTRUCTION NO. 10

Expert Testimony

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. There is an exception to this rule for "expert witnesses." An expert witness is a person who by knowledge, skill, education, training, or experience has become expert in some art, science, profession, or calling. Expert witnesses state their opinions as to matters in which they profess to be an expert and may also state their reasons for their opinions.

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. 11

Speculation

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

INSTRUCTION NO. 12

Sympathy

You must not be influenced by sympathy, bias, or prejudice for or against any party in this case.

INSTRUCTION NO. 13

Impeachment—Inconsistent Statement or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done if the act is done voluntarily and intentionally, and not because of mistake, accident, or other innocent reason.

INSTRUCTION NO. 14

Relevance and Use of Impeachment

Evidence that, at some other time while not under oath a witness who is not a party to this action has said or done something inconsistent with the witness' testimony at the trial, may be considered for the sole purpose of judging the credibility of the witness. However, such evidence may never be considered as evidence of proof of the truth of any such statement.

However, where the witness is a party to the case, and by such statement or other conduct admits some fact or facts against the witness' interest, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact or facts so admitted by such party, as well as for the purpose of judging the credibility of the party as a witness.

INSTRUCTION NO. 15

Objections and Rulings

Testimony and exhibits can be admitted into evidence during a trial only if they meet certain criteria or standards. It is the duty of the lawyer on each side of a case to object when the other side offers testimony or an exhibit that the lawyer believes is not properly admissible under the rules of law. Only by offering an objection can a lawyer request and obtain a ruling from me on the admissibility of the evidence being offered by the other side. You should not be influenced against any lawyer or the lawyer's client because the lawyer has made objections.

Do not attempt to interpret my rulings on objections as somehow indicating how I think you should decide this case. I am simply making a ruling on a legal question.

INSTRUCTION NO. 15

Province of Judge and Jury

After you have heard all the evidence, the parties have presented their arguments, and I have read you the instructions, you will meet to make your decision. You will determine the facts from all the testimony and other evidence that is presented. You are the sole and exclusive judge of the facts. I must stress that you are required to accept the rules of law that I give you, whether or not you agree with them.

The law permits me to comment on the evidence in the case during the trial or while instructing the jury. Such comments are only expressions of my opinion as to the facts. You may disregard these comments entirely, because you are to determine for yourself the weight of the evidence and the credibility of each witness.

In addition, during the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions.

INSTRUCTION NO. 16

Order of Trial

The trial will begin after lunch. First, the lawyers for each side may make opening statements. What is said in the opening statements is not evidence but is simply an outline to help you understand what each party expects the evidence to show. A party is not required to make an opening statement.

After the opening statements, Plaintiff will present evidence in support of his claim and Defendant's lawyer may cross-examine the witnesses. At the conclusion of Plaintiff's case, Defendant may introduce evidence, and Plaintiff's lawyer may cross-examine the witnesses. Because some of Defendant's witnesses are the same as Plaintiff's witnesses, Defendant may directly examine Plaintiff's witnesses during Plaintiff's case. You are to treat this testimony as if Defendant had offered it after the conclusion of Plaintiff's case. Defendant is not required to introduce any evidence or call any witnesses. If Defendant introduces evidence, Plaintiff may then present rebuttal evidence.

After the evidence is presented, the parties' lawyers will make closing arguments explaining what they believe the evidence has shown. Plaintiff's lawyer will present first, and Defendant's lawyer will follow. Plaintiff's lawyer may respond to any statements made by Defendant's lawyer. What the lawyers say in the closing arguments is not evidence. Finally, I will instruct you on the law that you are to apply in reaching your verdict. You will then decide the case.