

JURY INSTRUCTION NO. ____

Members of the jury, you have heard all of the testimony and received the evidence and will shortly hear arguments of counsel. I will presently instruct you as to the rules of law which you will use and apply to this evidence in reaching your verdict. When you took your places in the jury box, you made an oath that you would follow and apply these rules of law to the evidence in reaching your verdict in this case. It is therefore, your duty as jurors to follow the law which I shall now state to you. You are not to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base your verdict upon any other view of the law than that given in these instructions by the Court.

You are not to single out one instruction alone as stating the law, but you must consider these instructions as a whole. It is your exclusive province to determine the facts in this case and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law. Both the Plaintiff and the Defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case.

It is your duty to determine the facts and to determine them from the evidence produced in open court. You are to apply the law to the facts and in this way decide the case. You should not be influenced by bias, sympathy or prejudice. Your verdict should be based on the evidence and not upon speculation, guesswork, or conjecture. You are required and expected to use your good common sense and sound honest judgment in considering and weighing the testimony of each witness who has testified in this case.

The evidence which you are to consider consists of the testimony and statements of the witnesses and exhibits offered and received. You are also permitted to draw such reasonable

inferences from the evidence as seem justified in the light of your own experience. Arguments, statements, and remarks of counsel are intended to help you understand the evidence and apply the law, but are not evidence. If any argument, statement, or remark has no basis in the evidence, then you should disregard that argument, statement, or remark.

The production of evidence in Court is governed by rules of law. From time to time during the trial it has been my duty as Judge to rule on the admissibility of evidence. You must not concern yourself with the reasons for my rulings since they are controlled and governed by rules of law. You should not infer from any rulings by me on these motions or objections to the evidence that I have any opinion on the merits favoring one side or another. You should not speculate as to possible answers to questions which I did not require to be answered. Further, you should not draw any inference from the content of these questions. You are to disregard all evidence which was excluded by me from consideration during the course of the trial. If in stating the law to you I repeat any rule, direction or idea, or if I state the same in varying ways, no emphasis is intended and you must not draw any inference therefrom. The order in which these instructions are given has no significance as to their relative importance.

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At least one of you has been taking notes. These notes may be used solely by you to refresh your memory, but the rest of you who have not been taking notes should not rely in any way upon those notes. You should rely upon your own memory of the testimony rather than upon the notes of another person as the notes may be in error. Jurors who have been taking notes should not attempt to use those notes in an effort to convince fellow juror of the accuracy of their recollections.

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You may not communicate with anyone about the case on your cell phone, through e-mail, BlackBerry, iPhone, text messaging or on Twitter, through any blog or website, through any Internet chat room, or by way of any other social-networking Web sites, including Facebook, MySpace, LinkedIn and YouTube.

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You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, state of mind, demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider the extent to which it is 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 the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and 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 credibility, if any, as you may think it deserves.

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The rules of evidence provide that where scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters. You will recall that expert testimony has been given in this case. You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

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The Court instructs the jury that the phrase "preponderance of the evidence," as used in these instructions, means that evidence which is most consistent with the truth as measured by the experience and judgment of the jury; it is that which accords best with reason and probability. It does not depend upon the number of witnesses. It does depend upon the weight and credibility that should be given to the testimony of the witnesses. It is the evidence which, after examination, has a greater persuasive and convincing power; it is that which satisfies your minds as jurors.

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In order to be a proximate cause, the negligence of defendant must be a substantial factor in producing plaintiff's injury. If the plaintiff would have been injured even if the defendant had not been negligent, the defendant's negligence is not a substantial factor and not a proximate cause.

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You are instructed that damages is the word which expresses in dollars and cents the injury sustained by Plaintiff, if any, that you find by a preponderance of the evidence.

In order to recover damages, they must be shown with reasonable probability both as to their nature and as to their cause. However, a plaintiff does not lose his/her right to recover damages because he/she is unable to prove with absolute certainty the mathematical value of his/her injury. If the cause of the injury is reasonably probable, you may reasonably estimate the damages, and the assessment thereof is within the sole discretion of the jury.

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You are instructed that just compensation is a decision to be made by the jury. Your discretion as to the measure of damages is wide, but not unlimited, and you may not act arbitrarily. Exercise your discretion as to the amount of damages reasonably, intelligently and in harmony with the evidence of the case and the Court's instructions. The damages for personal injury cannot be assessed by any fixed rule, but you are the sole judges as to the measure of damages in this case.

You may consider the following factors to determine the amount of damages, if any, to award Plaintiff as may be shown by a preponderance of the evidence:

1. Past, present and future medical expenses, if any;
2. Past, present, and future pain, suffering and mental anguish, if any.

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The law forbids you to decide any issue in this case by the flip of a coin, the drawing of lots or by any other chance determination. For example, if you determine that a party is entitled to recover, you must not decide the amount of damages to be awarded by averaging the amounts you arrive at individually and making your verdict, without further exercise of your independent consideration, judgment and decision.

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It is not necessary that all twelve of you agree upon a verdict in this case. When any nine or more of your members have agreed upon a verdict, it may be returned in the court as the verdict of the entire jury.

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The verdict of the jury must represent the considered judgment of any nine jurors. In order to return a verdict it will be necessary that nine jurors agree thereto. In other words, at least nine jurors must agree on a verdict in this case. It is your duty as jurors to consult with one another and to deliberate in view of reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous, but do not surrender your honest convictions 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.

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Upon retiring to the jury room, you will select one from among your number to act as foreperson. The foreperson will preside over your deliberations and will be your spokesperson before the Court.

If it becomes necessary during your deliberations to communicate with me, please write out your message or question and pass the note to the bailiff. No member of the jury should ever attempt to communicate with me by any means other than a signed writing.

Bear in mind also that you are never to reveal to any other person - not even me - how the jury stands, numerically or otherwise, until after you have reached a verdict unless asked by me in open court.