

**In the United States District Court
for the District of Kansas**

Case No. ____

PLAINTIFF,

Plaintiff

v.

DEFENDANT,

Defendant

JURY INSTRUCTIONS

PRELIMINARY INSTRUCTION

MEMBERS OF THE JURY:

At the end of the trial, I will give you detailed guidance on the law and on how you will go about reaching your decision. But now I simply want to explain, generally, how this trial will proceed and provide some basic principles about your duty as jurors.

This is a civil case. To help you follow the evidence, I am going to summarize the parties' positions. Plaintiff, [name], claims that Defendant, [name], [describe claims, using description either jointly submitted or provided to the parties with opportunity to object on the record]. This is merely a description of Plaintiff [name]'s claims and contentions. It is

not evidence of the validity of these claims or anything else. Defendant [name] has denied these claims [or portions of these claims] and contends that [description of counterclaims and/or affirmative defenses].

It is the Plaintiff's burden to prove these claims to you by a preponderance of the evidence. That means you may not find for Plaintiff unless all [eight] of you unanimously find that Plaintiff has proved, in light of all the evidence, that these claims are more probably true than not true. [*If there are counterclaims:* For Defendant's counterclaims, it is Defendant's burden to prove those claims to you, also by a preponderance of the evidence. This means that you may not find for Defendant on Defendant's counterclaims unless all [eight] of you unanimously find that Defendant has proved, in light of all the evidence, that these counterclaims are more probably true than not true.]

The first step in the trial will be the opening statements. Each side will have 20 minutes. Plaintiff in [his/her/its] opening statement will tell you about the evidence that [it] intends to put before you. Just as Plaintiff's claims are not evidence, neither is the opening statement. Its purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead.

After Plaintiff's opening statement, Defendant's attorney may make an opening statement. [Change if Defendant reserves its statement until its case in chief.]

Evidence will then be presented. You will use the evidence to determine the facts. The evidence will consist of the testimony of the witnesses, documents, and other things received into the record as exhibits and any facts to which the lawyers stipulate. A stipulation means that all parties agree that certain facts are true. [In this case, the parties have stipulated that [fact stipulations]. Because there is no

disagreement over these facts, there will be no need for the parties to present evidence on these facts. You must accept these facts as true for the purposes of your deliberations.] [The Court has taken judicial notice of the following facts: [facts noticed]. This means that I have determined that these facts are true, because they can be—and have been—accurately and readily determined from a reputable source and cannot reasonably be disputed. Because there is no dispute over these facts, there will be no need for the parties to present evidence on these facts. You must accept these facts as true for the purposes of your deliberations.]

After Plaintiff finishes [his/her/its] evidence, Defendant may then offer [his/her/its] evidence. The Defendant's counsel may present evidence, but is not required to do so. I remind you that it is the Plaintiff that must prove that [its] claims are more probably true than not true. If Defendant submits evidence, Plaintiff may introduce rebuttal evidence.

At times during the trial, a lawyer may make objections to a question asked by another lawyer, or to an answer given by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from any objections or from my rulings on the objections. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given if I had allowed the answer. If I overrule the objection, treat the answer like any other. If I tell you not to consider a particular statement, you may not consider or rely on that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose and no other.

During the course of the trial I may have to interrupt the proceedings to confer with the attorneys about the rules of law that should apply. Sometimes we will talk briefly at the

bench. But some of these conferences may take more time, so I will excuse you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly because conferences often actually save time in the end.

During the course of the trial I may ask a question of a witness. If I do, that does not indicate that I have any opinion about the facts in the case. I am only trying to bring out facts that you may consider.

You are to consider all the evidence received in this trial. It will be up to you to decide which witnesses to believe, what evidence to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the trial.

After you have heard all the evidence on both sides, I will instruct you on the rules of law that you are to use in reaching your verdict. Plaintiff and Defendant will each be given time to make their final arguments.

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes.

If you do decide to take notes, be careful not to get so involved in note-taking that you become distracted. And remember that your notes will not necessarily reflect exactly what was said, so 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, leave them in the jury room at night and do not discuss the contents of your notes until you begin your deliberations.

During the course of the trial, you cannot discuss the case with your fellow jurors before you are permitted to do so at the conclusion of the trial. Nor can you discuss the case with anyone else until after a decision has been reached. Therefore, you cannot talk with any witness, any party, or any of the lawyers at all. In addition, during the course of the trial you cannot talk about the case or otherwise have any communications about the case with anyone, including your fellow jurors, until I tell you that such discussions may take place. Thus, in addition to not having face-to-face discussions with your fellow jurors or anyone else, you cannot communicate with anyone about the case in any way, whether in writing, email, text messaging, blogs, Internet comments, social media websites, or other apps (like Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, or Snapchat).

You also cannot conduct any type of independent or personal research or investigation into any matters related to this case. Therefore, you cannot use your cellphones, iPads, computers, tablets, or any other device to do any research or investigation about this case, the matters in the case, the legal issues in the case, or the individuals, places, or entities involved in the case. And you must ignore any information about the case you might see, even accidentally, while browsing the Internet or on your social media feeds. This is because you must base the decisions you will have to make in this case solely on what you hear and see in this courtroom.

The court reporter is making stenographic notes of everything that is said. This is basically to assist any appeals. A typewritten copy of the testimony will not be available for your use during deliberations. Any exhibits, however, will be available to you during your deliberations.

Now that the trial has begun you must not hear or read about it in the media. The reason for this is that your

decision in this case must be made solely on the evidence presented at the trial.

With that introduction, [Plaintiff's attorney], you may present the opening statement for Plaintiff.

JURY INSTRUCTION NO.

The presentation of evidence is now complete. I gave you some preliminary instructions and definitions at the outset of this case, and I now give you these final instructions. In the interest of clarity, I will read the instructions to you, and each of you will have a copy of the instructions in the jury room.

In any jury trial there are, in effect, two judges. I am one of the judges; you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in reaching your verdict.

You must follow the law as set out in these instructions and apply that law to the facts you find from the evidence presented in this trial. In explaining the rules of law that you must follow, I will give you some general instructions that apply in every case—for example, instructions about the burden of proof and about insights that may help you to judge the believability of witnesses. Then, I will give you some specific rules of law that apply to this particular case. Finally, I will explain the procedures that you should follow in your deliberations and the possible verdicts that you may return. Again, these instructions will be given to you for use in the jury room, so you need not take notes.

JURY INSTRUCTION NO.

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision about the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

No single instruction or smaller group of instructions states the law; instead, you must consider all the instructions as a whole. You are not to concern yourselves with the wisdom of any of these instructions.

Thus, you have no right to disregard or give special attention to any one instruction, or to question the correctness of any rule that I may state to you. You must not substitute or follow your own notion or opinion about what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. You should not read into these instructions (or anything else that I may have said or done) any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without sympathy or bias for or against any party. You must consider and decide this case as a lawsuit between persons of equal standing in the community. [A [business entity/governmental entity] is entitled to the same fair and impartial treatment as an individual.] The law does not permit jurors to be governed by sympathy, prejudice, or public opinion.

You must not allow yourself to be influenced by anything other than the issues of this case, the evidence in this case, and the law that I have provided in these instructions. To do otherwise would be a violation of your sworn duty and of the promises that you made before being accepted by the parties as jurors.

JURY INSTRUCTION NO.

This instruction sets forth Plaintiff [name]'s claim(s) against Defendant [name], as well as Defendant's position on these claim(s). The claim(s), Defendant's denial of the claim(s), and Defendant's asserted defenses are not evidence, and you should not consider them as evidence. Each party's allegations must be established and proven by the evidence and according to the law as I will explain it to you momentarily. The following contentions simply explain the nature of the parties' dispute.

Plaintiff's contentions:

[claims, suffered damages as a result of, seeks damages for/in the amount of]

Plaintiff must prove [its/her/his] claim by a preponderance of the evidence.

Defendant's contentions:

Defendant denies Plaintiff's allegations. Specifically, Defendant claims that [contentions and defenses].

JURY INSTRUCTION NO.

The burden of proof is on Plaintiff to prove every essential element of [his/her/its] claim by a preponderance of the evidence. [OR: Plaintiff and Defendant each have the burden of proof on their respective claims. Plaintiff must prove every essential element of [his/her/its] claim by a preponderance of the evidence. And Defendant must prove every essential element of [his/her/its] [counterclaim/affirmative defense of ____] by a preponderance of the evidence.] Burden of proof means burden of persuasion. If the proof fails to establish any essential element of Plaintiff's claim by a preponderance of the evidence, you must find for Defendant on that claim [modify as appropriate].

A party who must prove something by a preponderance of the evidence must persuade you that its claims are more probably true than not true. To prove something is more likely to be true than not true does not necessarily depend on a greater number of witnesses or the length of the presentation of testimony, but instead means the greater weight of credible evidence, taken together in context. In other words, a preponderance of the evidence means evidence that, when considered and compared with the opposing evidence, has more convincing force, and produces in your minds the belief that what is sought to be proved is more likely true than not true. If the evidence on an issue is equally balanced, then the party with the burden to prove its claim by a preponderance of the evidence must fail.

This rule does not, of course, require proof to an absolute certainty. Proof to an absolute certainty is seldom possible in any case. Additionally, you have probably heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than "more likely true than not true." It applies in criminal cases, but not in this civil case; so put it out of your mind.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, all exhibits received in evidence, and any stipulations entered by the parties. You may consider this evidence regardless of which party presented the evidence at trial.

JURY INSTRUCTION NO.

[if appropriate]

For some of the claims in this case, the burden of proof is “clear and convincing evidence.” This is a higher burden than the preponderance of evidence standard that governs most of the claims in this case.

It is the law of this state that to prove the existence of a fiduciary relationship, the party claiming its existence must do so by evidence that is clear and convincing.

It is the law of this state that to prove fraud, the party claiming fraud must do so by evidence that is clear and convincing.

A party who must prove something by clear and convincing evidence must persuade you of the truth of its claims by evidence that is “clear,” in the sense that it is certain, plain to understand, and unambiguous, and “convincing,” in the sense that it is so reasonable and persuasive as to cause you to believe it. Although this standard requires more than a preponderance of the evidence, it does not require proof beyond a reasonable doubt.

JURY INSTRUCTION NO.

[Instructions specific to the claims, elements, standards, damages, relevant definitions—to be proposed by parties, with appropriate citations]

JURY INSTRUCTION NO.

I have instructed you concerning Plaintiff's damages, but that does not mean that I believe the Plaintiff should—or should not—prevail in this case. That decision rests with you.

JURY INSTRUCTION NO.

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying in person or by deposition, the exhibits that I allowed into evidence [and any stipulation the parties have made/any facts of which I have taken judicial notice]. You will have the exhibits with you in the jury room during your deliberations.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial, I made certain rulings. You must not speculate about the reasons for my rulings. Any disputes of this kind are not evidence, and you should not speculate about them. You are bound by your oath not to let them influence your decision in any way.

JURY INSTRUCTION NO.

There are two basic kinds of evidence you may consider. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

As a general rule, the law makes no distinction between direct and circumstantial evidence. It is for you to decide how much weight to give any evidence, and you are permitted to consider direct and circumstantial evidence equally. The law simply requires that you find the facts in accord with 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 the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts that 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 that have been established by the testimony and evidence in this case.

JURY INSTRUCTION NO.

Although you must consider all of the evidence, you are not required to accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest and fair? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either party? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? When weighing conflicting testimony, you should consider whether any discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent mis-recollection—like failure of recollection—is not uncommon.

In reaching a conclusion on a particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

JURY INSTRUCTION NO.

[If appropriate]

The parties stipulate to the following:

A stipulation means that all parties agree that these facts are true. Because there was no disagreement over these facts, there was no need for the parties to present evidence on these facts. You must accept these facts as true for the purposes of your deliberations.

JURY INSTRUCTION NO.

[If appropriate]

The Court has taken judicial notice of the following:

This means that I have determined that these facts are true, because they can be—and have been—accurately and readily determined from a reputable source and cannot reasonably be disputed. Because there is no dispute over these facts, there was no need for the parties to present evidence on these facts. You must accept these facts as true for the purposes of your deliberations.

JURY INSTRUCTION NO.

[If appropriate]

You have heard certain testimony from experts, that is, from people who are specially qualified by their experience or training to possess knowledge on matters not common to laypersons. The law permits experts to give their opinions regarding such matters. But you are to consider the testimony of experts like any other testimony and give it only the weight you think it deserves. You may consider the expert's education and experience, the support and reasoning provided for his or her opinions, and the testimony's relationship to other evidence.

JURY INSTRUCTION NO.

[if appropriate]

During the trial, certain testimony was presented by way of deposition rather than by live witness testimony. This deposition testimony consisted of sworn, recorded answers to questions asked of the witness—who, for reasons I have found to be appropriate, was not present to testify live—in advance of trial, by one or more of the attorneys for the parties to the case. Such testimony is entitled to the same consideration from you, as to credibility and weight, as if the witness had been present to testify live from the witness stand.

JURY INSTRUCTION NO.

For each witness, you are to determine the weight and credit to give that witness's testimony. You have a right to use your common knowledge and experience in evaluating witness testimony.

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 failed to say or do something, inconsistent with the witness's present testimony. You may consider such evidence only as far as it may impact the witness's credibility—that is, only in deciding the weight and credit you will give to that witness's testimony.

If you believe any witness has been so impeached, then it is your sole prerogative to give the testimony of that witness such credibility or weight, if any, that you think it deserves.

JURY INSTRUCTION NO.

During the trial, I have ruled on objections to the admission of certain things into evidence. Questions about the admissibility of evidence are solely questions of law for me to decide, and you must not concern yourselves with the reasons for my rulings. Neither may you draw any inferences from my rulings. Consider only the evidence admitted.

[If appropriate]

At other times during trial, I instructed you that I was admitting evidence for a limited purpose only. You may consider that evidence only for that specific purpose and must not consider it for any other purpose.

[If appropriate]

You may notice that some exhibits contain redactions. Portions of these exhibits have been redacted either because I have ordered them to be redacted or because the parties have agreed that redaction is appropriate (for example, irrelevant personal information such as birth dates will often be redacted from exhibits). You should disregard any redactions just as you would disregard any other evidence that I have excluded from the record.

JURY INSTRUCTION NO.

Nothing that I have said or done in the course of this trial—whether in these instructions, in any ruling on objections, or in any other remark that I may have made or action I may have taken—was intended to suggest how I would resolve any of the issues in this case. You must not speculate otherwise.

JURY INSTRUCTION NO.

In considering the evidence in this case, you are expected to use your good sense, consider evidence only for those purposes for which it has been admitted, and give it a reasonable and fair construction in light of your common knowledge of the natural tendencies and inclinations of human beings.

I remind you again that statements, objections, or arguments of the lawyers are not evidence. The function of the lawyers in this courtroom has been to call your attention to the evidence and to inferences that are helpful to their sides of the case.

Bear in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in and the law applicable to this case. That was the oath you took before the parties accepted you as jurors, and they have the right to expect nothing less.

JURY INSTRUCTION NO.

During your deliberations—that is, when all of you are together in the jury room—you are released from the admonition prohibiting discussion of the case. You may now discuss with each other the evidence and the law that has been presented in this case.

The admonition prohibiting discussion remains in effect, however, at any time when fewer than all of you are present in the jury room, or when you are away from the courthouse. The admonition about reading, listening to, or watching news reports about the case, doing any sort of independent investigation, or discussing the case with any third party, remains in effect at all times until I release you from this admonition. During your deliberations, you must not communicate with anyone else, by any means, about the case. This means you may not use any electronic device or media (like a phone, computer, or tablet), the Internet, any text or instant messaging service, or any social media apps (like Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, and Snapchat) to research or communicate about what you have seen and heard in the courtroom.

Information that you find on the Internet or through social media might be incomplete, legally irrelevant, inaccurate, or even misleading. And the use of phones, tablets, or computers—and the news and social media apps on those devices—may inadvertently expose you to certain notices, pop-ups, or advertisements that could influence your consideration of the matters that you have heard about in this courtroom.

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 and the parties

in this case. This would unfairly and adversely impact the judicial process. Thus, until I accept your verdict and discharge you, you are only permitted to discuss the case with your fellow jurors during deliberations. You may discuss the case with them because they have seen and heard the same evidence and instructions on the law that you have, and it is important that you decide this case solely on the evidence presented during the trial, without undue influence by anything or anyone outside the courtroom. Again, you can only discuss the case during deliberations in the jury room when all of your fellow jurors are present there. I expect you to inform me, at the earliest opportunity, if you learn about or share any information about this case outside of the courtroom, or if you learn that another juror has done so.

[The alternate jurors will not be allowed to participate in deliberations, but they remain bound by all aspects of the admonition until they are discharged. The clerk will notify the alternate jurors of the verdict and, if appropriate, when they will need to return.]

JURY INSTRUCTION NO.

I have permitted you to take notes during the trial and cautioned you at the outset not to allow note-taking to interfere with your duty to listen and consider all of the evidence. I would like to again caution you.

There is a tendency to attach undue importance to matters that one has written down. And you may have declined to take notes on testimony that seemed unimportant at the time but has taken on greater importance now in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own, individual memory. They are not evidence, they are not a complete outline of the proceedings, and they are not to control over your own impressions or recollections from the trial. Each of you should rely on your own independent memory of what the evidence was, and you should not be unduly influenced by the notes of other jurors. If your memory differs from anyone's notes, including your own, you should rely on your memory and not the notes. Your collective memory, as a jury, is your greatest asset in deciding this case.

JURY INSTRUCTION NO.

Your verdict must represent the considered judgment of each juror. Your verdict must be unanimous—agreed to by all [eight] of you.

As jurors, you must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violating your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own views or to change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or simply for the 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 determine the truth from the evidence in the case.

JURY INSTRUCTION NO.

When you go to the jury room, you should first select one of your members to act as your foreperson. The foreperson will help to guide your deliberations and will speak for you here in court.

The next thing you should do is review the Court's instructions. Not only will your deliberations be more productive if you understand the legal principles on which your verdict must be based, but also for your verdict to be valid, you must follow the Court's instructions throughout your deliberations. Remember, you are the judge of the facts, but you are bound by your oath to follow the law as stated in these instructions.

In this case, your verdict will be returned in the form of written answers to special written questions submitted to you by the Court. A verdict form has been prepared for your convenience. Your answers will constitute your verdict. Your answers must be unanimous—agreed to by all [eight] of you.

You will take the verdict form to the jury room, and when you have reached a unanimous agreement in your verdict, you will have your foreperson fill it in, date and sign it, and then carry it into the courtroom when you all return.

JURY INSTRUCTION NO.

If, during your deliberations, you should desire to communicate with me, please reduce your message or question to writing, signed by the foreperson, and pass the note to the jury bailiff, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you in person. You should never, in any written note you might send, disclose your numerical division at any time. In other words, do not tell me the number or proportion of jurors who favor a particular decision for any aspect of your deliberations.

None of you should ever attempt to communicate with me about the case other than by a signed writing. And, again, until I receive your verdict you must not communicate with, or provide information to, anyone about this case by any means.

JURY INSTRUCTION NO.

A final suggestion from the Court—technically not an instruction on the law—might assist your deliberations: your attitude at the outset of, and during, deliberations is important. It is seldom productive for any juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. The reason is this: we are all human, and it is difficult for us to back down from a position once definitively stated, even if we are later convinced it is unsound.

You and your fellow jurors have been selected for the purpose of doing justice. That requires deliberation—counseling together in an effort to agree. Have in mind at all times that you are a deliberative body, selected to function as judge of the facts in a controversy involving substantial rights of real parties. You will make a definite contribution to the efficient administration of justice, if and when you arrive at a just and proper verdict under the evidence that has been admitted. No one can ask more, and you will not be satisfied to do less.

You will now hear the closing arguments from counsel. Please give them your thoughtful attention.

DATED: _____

TOBY CROUSE
United States District Judge

In the United States District Court
for the District of Kansas

Case No. _____

PLAINTIFF,

Plaintiff

v.

DEFENDANT,

Defendant

VERDICT FORM

Question No. 1:

Plaintiff _____ Defendant _____

Please proceed to answer Question No. 2.

Question No. 2: ...

The jury foreperson must sign and date this Verdict Form, below.

Date

Foreperson