UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOAN JARA; AMANDA JARA TURNER; and MANUELA BUNSTER,

Plaintiffs,

vs. Case No. 6:13-cv-1426-Orl-37GJK

PEDRO PABLO BARRIENTOS NUNEZ,

Defendant.

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It is my duty to instruct you on the rules of law that you must use in deciding this case.

When I have finished, you will go to the jury room and begin your discussions, sometimes called deliberations.

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and is not binding on you.

You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

“Direct evidence” is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

“Circumstantial evidence” is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal

difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point does not necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or did not say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake does not mean a witness was not telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that does not mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

Sometimes the parties have agreed that certain facts are true. This agreement is called a stipulation. You must treat these facts as proved for this case. The parties have stipulated to the following facts:

1. In September 1973, Defendant was a solider in the Chilean Army.
2. In September 1973, Defendant was a Lieutenant at the Tejas Verdes School of Engineers.
3. In September 1973, the Tejas Verdes School of Engineers was based in San Antonio, Chile.
4. In 1973, the Tejas Verdes Regiment contained a battalion known as the Bronze Battalion.
5. The Bronze Battalion was commanded by Major Alejandro Rodríguez Faine.
6. Within the Bronze Battalion were three combat companies.
7. One of these companies was Second Combat Company of the Tejas Verdes School of Engineers (Second Company).
8. The Second Company was commanded by Captain Luis Germán Montero Valenzuela.
9. After Captain Luis Germán Montero Valenzuela, Lieutenant Pedro Pablo Barrientos Nuñez (Defendant) was the most senior officer in the Second Company.

10. As the second-highest officer in the Second Company, Defendant could issue orders to all individuals in the Second Company, save for Captain Luis Germán Montero Valenzuela.

11. The Second Company was composed of three sections, respectively, the first section, second section, and third section.

12. The first section of the Second Company was commanded by Lieutenant Pedro Pablo Barrientos Nuñez (Defendant).

13. The second section of the Second Company was commanded by Sub-Lieutenant Rodriguez Rodrigo Fuschloger, who was of a rank junior to Defendant.

14. The third section of the Second Company was commanded by Sub-Lieutenant Fernando Del Valle, who was of a rank junior to Defendant.

15. In September 1973, Manuel Rolando Mella San Martin was a sergeant in the first section of the Second Company.

16. In September 1973, Victor Antilao was a corporal in the first section of the Second Company.

17. In September 1973, Nelso Artemio Barraza Morales was a corporal in the first section of the Second Company.

18. In September 1973, Emilio Enrique Kifafi Duran was a conscript soldier in the Second Company.

19. In September 1973, Ruben Vargas Matta was a conscript soldier in the Second Company.

20. In September 1973, Francisco del Carmen Quiroz Quiroz was a conscript soldier in the Second Company.

21. In September 1973, Hector Manuel Hinojosa Retamal was a conscript soldier in the Second Company.

22. In September 1973, Jose Benito Garcia Mella was a conscript soldier in the Second Company.

23. In September 1973, Gustavo Baez Duarte was a conscript soldier in the Second Company.

24. In September 1973, Mario Arturo Gonzalez Riquelme was a conscript soldier in the Second Company.

25. In September 1973, Victor Rosendo Pontigo Araya was a conscript soldier in the Second Company.

26. In September 1973, Manuel Isidoro Chaura Pavez was a conscript soldier in the Second Company.

27. In September 1973, Carlos Daniel Rivero Valenzuela was a conscript soldier in the Second Company.

28. In September 1973, Defendant could issue orders to all sergeants of the Second Company.

29. In September 1973, Defendant could issue orders to all corporals of the Second Company

30. In September 1973, Defendant could issue orders to all conscripts of the Second Company.

31. In September 1973, Defendant could issue orders to all officers in the Second Combat Company, except for Captain Luis Germán Montero.

32. In September 1973, Defendant was the highest ranking officer in the Second Combat Company directly below Captain Luis Germán Montero.

33. A Luger is a type of pistol.

34. In September 1973, Defendant's side weapon was a Luger.

35. In September 1973, Defendant also had an army-issued SIG rifle.

36. Mauser was a manufacturer of Luger.

37. On September 11, 1973, General Augusto Pinochet led a military *coup d'état* in the Republic of Chile (the coup).

38. The coup overthrew the democratically elected government of Salvador Allende.

39. On September 11, Defendant travelled from San Antonio to Santiago.

40. On September 11, the Bronze Battalion of the Tejas Verdes travelled to Santiago.

41. On September 11, Defendant travelled to Santiago with members of the Bronze Battalion of the Tejas Verdes.

42. Between September 11 and September 17, the Bronze Battalion from the Tejas Verdes School of Engineers was in Santiago.

43. Between September 11 and September 17, the Bronze Battalion from the Tejas Verdes School of Engineers participated in the coup.

44. Defendant participated in the coup.

45. The Bronze Battalion participated in the coup.

46. The Second Company arrived at 1724 Avenue Almirante Blanco Encalada, Santiago, Chile (Arsenales de Guerra) on the morning of September 11, 1973.

47. Defendant arrived at Arsenales de Guerra on the morning of September 11, 1973.

48. At Arsenales de Guerra, Defendant supervised the distribution of armbands to other soldiers designed to identify them as supporters of the *coup*.

49. On the morning of September 11, 1973, Defendant went with soldiers from the Second Company to lead military patrols in and around the Presidential Palace (or La Moneda) in Santiago.

50. On the morning of September 11, 1973, Defendant gave orders to soldiers in the first section of the Second Company.

51. During the coup and after the military junta took power, perceived and actual political opponents of the junta were detained, interrogated, tortured, and killed by the Chilean Armed Forces.

52. Between September 11 and September 17, 1973, Defendant reported directly to Major Alejandro Rodriguez Faine.

53. Between September 11 and September 17, 1973, Defendant travelled to the Ministry of Defense.

54. Between September 11 and September 17, 1973, Defendant received orders from members of the Chilean Armed Forces at the Ministry of Defense.

55. Between September 11 and September 17, 1973, Defendant delivered reports to members of the Chilean Armed Forces at the Ministry of Defense.

56. In 1973, Chile Stadium was a well-known complex in Santiago, Chile.

57. After 1973, Chile Stadium continued to be a well-known complex in Santiago, Chile.

58. From September 11, 1973 to approximately September 17, 1973, members of the Chilean Armed Forces brought perceived and actual political opponents of the newly installed military dictatorship to detention centers throughout Chile.

59. From September 11, 1973 to approximately September 17, 1973, members of the Chilean Armed Forces detained perceived and actual political opponents of the newly installed military dictatorship.

60. From September 11, 1973 to approximately September 17, 1973, members of the Chilean Armed Forces brought individuals with leftist political ideologies to Chile Stadium.

61. From September 11, 1973 to approximately September 17, 1973, members of the Chilean Armed Forces detained individuals with leftist political ideologies at Chile Stadium.

62. On September 11, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

63. On September 12, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

64. On September 13, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

65. On September 14, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

66. On September 15, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

67. On September 16, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

68. On September 17, 1973 members of the Second Company of Tejas Verdes were assigned to Chile Stadium.

69. Members of the Second Company guarded detainees at Chile Stadium.

70. Members of the Second Company guarded Víctor Jara at Chile Stadium.

71. Víctor Jara was shot in the head, and by multiple additional gunshot wounds to his body, which caused his death.

In this case, Plaintiff Joan Jara, in her capacity as the personal representative of the Estate of Victor Jara, claims that Defendant is liable for the torture of Victor Jara. Additionally, Plaintiff Joan Jara, in her individual capacity and in her capacity as the personal representative of the Estate of Victor Jara, and Plaintiffs Amanda Jara Turner and Manuela Bunster, in their individual capacities, claim that Defendant is liable for the extrajudicial killing of Victor Jara.

Defendant denies those claims.

In this case it is the responsibility of Plaintiffs to prove every essential part of their claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that the Plaintiffs' claim is more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the Plaintiffs.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses,

regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the Plaintiffs' claims by a preponderance of the evidence, you should find for Defendant as to that claim.

Plaintiffs claim that Defendant committed the extrajudicial killing of Victor Jara. The term "extrajudicial killing" means a deliberate killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people. It does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

To succeed on their claim for extrajudicial killing, Plaintiffs must prove by a preponderance of evidence that:

(1) Defendant deliberately killed Victor Jara;

(2) Defendant killed Victor Jara while acting under the actual or apparent authority, or color of law, of the Republic of Chile; and

(3) The killing was not previously authorized by a judgment of a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.

I will provide some definitions to aid you in your deliberations.

Acting under "color of law" means that a person is acting or purporting to act in the performance of his official duties. It means that the action is clothed with the authority of the government. A person can act under "color of law" even when his actions overstep, or constitute an abuse of, the actor's legal authority.

A "regularly constituted court" is an independent and impartial court established and organized in accordance with the laws and procedures already in force in a country, and it excludes all special tribunals (that is, courts or tribunals created for a specific event).

The phrase "judicial guarantees recognized as indispensable by civilized peoples" incorporates at least the barest of those trial protections that have been recognized by customary international law, including:

(1) The right to a fair hearing free from torture of the accused and bribery of witnesses;

(2) The right to a lawyer to represent the accused without restrictions or undue pressure and the right to freely communicate with one's lawyer;

(3) The right of access to evidence in the possession of the prosecution that could potentially assist the accused; and

(4) The right to have a conviction and sentence reviewed by appeal to a higher court or tribunal.

As I previously mentioned, Plaintiffs may prove their claims by direct or circumstantial evidence. Therefore, it is possible that Plaintiffs prove extrajudicial killing through the use of evidence that is entirely circumstantial or through a combination of direct and circumstantial evidence.

Plaintiff Joan Jara, in her capacity as the representative of Victor Jara's Estate, alleges that Defendant tortured Victor Jara. To prevail on this claim, Plaintiff Joan Jara must prove by a preponderance of evidence that:

(1) Defendant intentionally subjected Victor Jara to severe pain or suffering, whether physical or mental;

(2) Defendant inflicted severe pain or suffering on Victor Jara while acting under the actual or apparent authority, or color of law, of the Republic of Chile;

(3) Victor Jara was in the custody or physical control of Defendant; and

(4) The severe pain or suffering was inflicted for such purposes as obtaining from Victor Jara or a third person information or a confession, punishing Victor Jara for an act he or a third person committed or is suspected of having committed, intimidating or

coercing Victor Jara or a third person, or for any reason based on discrimination of any kind.

Torture can be either physical, mental, or both. Severe physical pain or suffering may include, but is not limited to, any of the following: shooting, suffocating, kicking, beating, use of electrical shock, or any form of mutilation. To constitute torture, mental pain or suffering must be prolonged and must be caused by or result from the intentional infliction or threatened infliction of severe physical pain or suffering or the threat of imminent death.

You may refer to the previous instruction for the definition of "color of law."

Torture, like extrajudicial killing, can be proved through either direct or circumstantial evidence, or through a combination of both.

You may find Defendant liable for the torture or extrajudicial killing of Victor Jara under any of several alternative theories of liability. Thus, even if Plaintiffs have not shown by a preponderance of the evidence that Defendant personally tortured or committed the extrajudicial killing of Victor Jara, you may still find that he is nevertheless responsible for the torture and/or extrajudicial killing of Victor Jara under one or more of the following additional theories of liability:

(1) Aiding and abetting;

(2) Conspiracy;

(3) Command responsibility; and/or

(4) Joint criminal enterprise.

Each of these is a separate theory of liability. You must consider them individually. You only need to find in Plaintiffs' favor on one of these five theories to hold Defendant liable with respect to each of Plaintiffs' claims. If you find that Plaintiffs have not carried their burden of proof on any one theory of liability, that finding does not affect your finding on any other theory of liability.

For Defendant to be liable under a theory of aiding and abetting, you must find that Plaintiffs proved by a preponderance of the evidence, as to each claim, that:

(1) One or more of the wrongful acts that comprise the claim—that is, the torture and/or extrajudicial killing of Victor Jara—were committed;

(2) Defendant gave substantial assistance to the person or persons who committed or caused one or more of the wrongful acts that comprise the claim; and

(3) Defendant knew that his actions would assist in the wrongful activity at the time he provided the substantial assistance.

Under an aiding and abetting theory of liability, it is not necessary that Defendant knew specifically which wrongful acts were being committed by the perpetrators, so long as they were a natural and foreseeable result of the activity that Defendant helped to undertake.

For Defendant to be liable under a theory of conspiracy, you must find that Plaintiffs proved by a preponderance of the evidence, as to each claim, that:

(1) Two or more persons agreed to commit a wrongful act;

(2) Knowing of at least one of the unlawful goals of the agreement and intending to help accomplish it, Defendant joined the agreement; and

(3) The torture or extrajudicial killing of Victor Jara was committed in furtherance of the agreement by someone who was a member of the agreement.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed to every detail of the conspiracy. Proof of a tacit, as opposed to explicit, understanding is sufficient to show agreement.

The existence of an agreement may be established by circumstantial evidence. The very nature of conspiracy frequently requires that the

existence of an agreement be proved by inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme. Among other things, this may include the nature of the acts done, the relationship between the co-conspirators, the interests of the alleged co-conspirators, and the relationship between the co-conspirators and the actions (e.g., the proximity in time and place of the acts and the duration of the actors' joint activity).

The exact limits of the scope of the plan need not be known to each conspirator, nor is it necessary that the identity of everyone involved in the conspiracy be known to all of them. Plaintiffs must only show that the conspirators shared the same general conspiratorial objective, even if their motives for desiring the conspiratorial objective are not necessarily identical.

Knowledge and participation in the plan may also be shown by circumstantial evidence. A defendant can be found liable even if his participation in the scheme is "slight" by comparison to the actions of other co-conspirators. Once the conspiracy has been formed, all of its members are liable for injuries caused by wrongful acts pursuant to or in furtherance of the conspiracy and all acts that were the natural and foreseeable consequence of the conspiracy. A conspirator need not participate actively in or benefit from the wrongful act in order to be found liable. He need not

even have planned or known about the injurious action, so long as the purpose of the wrongful act was to advance the overall object of the conspiracy.

For Defendant to be liable under a theory of command responsibility, you must find that Plaintiffs proved by a preponderance of evidence, as to each claim, that:

(1) A superior-subordinate relationship existed between Defendant and the person or persons who committed the torture and extrajudicial killing of Victor Jara;

(2) Defendant knew or, in light of the circumstances at the time, should have known that his subordinates had committed, were committing, or were about to commit unlawful acts, such as the torture and extrajudicial killing of Victor Jara; and

(3) Defendant failed to take all necessary and reasonable measures to prevent or stop the unlawful acts, such as torture and extrajudicial killing, or failed to investigate or punish his subordinates for the unlawful acts that they committed.

To establish a "superior-subordinate" relationship, Plaintiffs must prove by a preponderance of the evidence that Defendant had "effective control" over the person or persons who committed the torture and extrajudicial killing

of Victor Jara. The "effective control" requirement is satisfied if Defendant had the legal authority or practical ability to exert control over such person or persons. Defendant cannot escape liability where his own action or inaction caused or significantly contributed to a lack of effective control over his subordinates. Even if Defendant lacked legal authority, he nonetheless possessed "effective control" if he had the practical ability to exert control over his subordinates.

Plaintiffs do not have to prove that Defendant knew or should have known about the torture and/or extrajudicial killing of Victor Jara specifically. Rather, the knowledge requirement is satisfied if Plaintiffs prove by a preponderance of evidence that Defendant knew, or should have known, that his subordinates had committed, were committing, or were about to commit torture and/or extrajudicial killing. Defendant should have known that torture and/or extrajudicial killing were being committed if his subordinates were engaged in a pattern, practice, or policy of committing torture and/or extrajudicial killing.

To establish the third element, Plaintiffs must prove that Defendant failed to take all necessary and reasonable measures to prevent acts of torture and/or extrajudicial killing, or failed to punish his subordinates after the commission of acts of torture and/or extrajudicial killing. Failure to punish

may be established by proof that Defendant failed to properly investigate reliable allegations of torture and/or extrajudicial killing committed by his subordinates or failed to submit these matters to appropriate authorities for investigation and prosecution.

Under the law of command responsibility, an officer cannot escape liability by claiming that he was acting under orders from a higher authority.

For Defendant to be liable under a theory of joint criminal enterprise, you must find that Plaintiffs proved by a preponderance of the evidence, as to each claim, that Defendant was involved in a joint criminal enterprise that resulted in the torture and/or extrajudicial killing of Victor Jara.

Although I have used the term "joint criminal enterprise," remember that you are not being called on to decide a criminal case. As with the other claims, Plaintiffs' burden of proof is a preponderance of the evidence, and not the higher burden of proof required in criminal cases.

A joint criminal enterprise is a common plan or purpose between two or more people to commit a wrongful act. If Defendant is found to participate in a joint criminal enterprise, then he is liable as a co-perpetrator of wrongful acts that result from that enterprise.

To establish a joint criminal enterprise, Plaintiffs must prove the following elements by a preponderance of the evidence:

(1) The existence of a common plan or purpose to commit any wrongful act;

(2) Defendant committed an act that either directly or indirectly contributed to the execution of this common plan or purpose;

(3) Defendant committed this act with the intention to participate in and further the common plan or purpose; and

(4) Wrongful acts committed in the execution of this plan resulted in the torture and/or extrajudicial killing of Victor Jara.

Defendant can be held liable for acts committed by a member of the joint criminal enterprise that were not agreed upon in the common plan as long as (i) the act was a natural and foreseeable consequence of the enterprise; (ii) Defendant was aware that the wrongful conduct was a possible consequence of the joint criminal enterprise; and (iii) even with that awareness, Defendant continued to participate in the enterprise.

A common plan or purpose need not be express but can be inferred from the circumstances, such as the fact that several people acted in unison.

Plaintiffs do not need to prove that the plan was prearranged. Instead, Plaintiffs can show that the plan materialized spontaneously and without prior preparation.

Plaintiffs also do not need to prove (i) that Defendant personally committed or personally participated in any of the wrongful acts, or (ii) that Defendant was physically present during the commission of the wrongful acts.

If you find in favor of any or all Plaintiffs and against Defendant, then you must determine an amount that is fair compensation for the damages suffered by the Plaintiff or Plaintiffs. Compensatory damages seek to make the party whole – that is, to compensate the Plaintiffs for the damage suffered as a result of Defendant's wrongful conduct. The damages, if any, that you award, must be full and fair compensation, no more and no less.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require Plaintiffs to prove their losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

Compensatory damages are the measure of the loss or injury sustained by the injured Plaintiff, and may embrace shame, mortification, humiliation, indignity to the feelings and the like, and they require no proof.

In particular, you may award compensatory damages for pain and suffering and mental and emotional distress. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award you make must be fair in light of the evidence presented at trial.

You should consider the following elements in determining the amount of compensatory damages, to the extent you find them proved by a preponderance of the evidence:

(1) Plaintiffs' physical and emotional pain, suffering, and mental anguish; and

(2) Plaintiffs' physical and mental injury.

In addition to compensatory damages, you have the discretion to award punitive damages. Unlike compensatory damages, which are imposed to reimburse plaintiffs for their injuries, punitive damages are designed to make an example of the defendant's conduct so that others will not engage in similar practices.

You may award punitive damages to Plaintiffs if they have proven that Defendant's conduct was wanton and reckless, not merely unreasonable. An act is wanton and reckless if it is done in such a manner, and under such

circumstances, as to reflect utter disregard for the potential consequences of the act on the safety and rights of others. The purpose of punitive damages is to punish a defendant for shocking conduct, in order to deter him and others from committing similar acts in the future. Punitive damages are intended to protect the community and to express the jury's indignation at a defendant's misconduct.

The award of punitive damages is within your discretion; you are not required to award them. Punitive damages are appropriate only for especially shocking and offensive misconduct. If you decide to award punitive damages, you must use sound reason in setting the amount. It must not reflect bias, prejudice, or sympathy toward any party. But the amount can be as large as you believe is necessary to fulfill the purpose of punitive damages. There is no exact standard for fixing the amount of punitive damages. Any award you make should be fair in the light of the evidence.

Should you award punitive damages to Plaintiffs, in fixing the amount, you must consider what is reasonably required to accomplish the goals of punishing Defendant and deterring others from committing similar acts. You should also consider the degree of reprehensibility of Defendant's conduct toward Plaintiffs and the relationship between the harm suffered by Plaintiffs and the amount of punitive damages you are considering. In sum, in

computing punitive damages you should award the amount you find appropriate to punish Defendant for the injuries to Plaintiffs in this lawsuit and to set an example to others that will deter them from engaging in similar conduct.

Finally, you may consider the financial resources of Defendant in fixing an amount of punitive damages. However, I instruct you that the burden is on Defendant to show that his financial circumstances warrant the limitation of any award.

Of course, the fact that I have given you instructions concerning the issue of Plaintiffs' damages should not be interpreted in any way as an indication that I believe that the Plaintiffs should, or should not, prevail in this case.

Your verdict must be unanimous – in other words, you must all agree. Your deliberations are secret, and you will never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your

honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you are judges – judges of the facts. Your only interest is to seek the truth.

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 the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube, or 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 only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as 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 only permitted to discuss the case with your fellow jurors during deliberations 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.

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict.]

Take the verdict form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill in the form, sign it, and date it. Then you will return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I will respond as promptly as possible—either in writing or by talking to you in the courtroom. Please understand that

I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.