

AUG 31 2016

Ann-Marie Di Saia, Peter J Zomber and Cheryl Zomber
v.
Neil Desai and Anjini Desai
Case No. SC120821

Sherri R. Gorter, Executive Officer/Clerk
By Laurie Pastel Deputy

Zomber Special Verdict

WE THE JURY IN THE ABOVE-ENTITLED CASE, ANSWER THE QUESTIONS AS
SUBMITTED TO US AS FOLLOWS:

1. Did the developer intend to protect the views in the Zomber's tract when it recorded the
CC&Rs in the Desais tract?

Yes ☐ No ☒

2 Does the Desais' house detract from the Zomber's view?

Yes ☒ No ☐

3. Does the Desais' house unreasonably obstruct the Zomber's view?

Yes ☐ No ☒

4. Would an ordinary person in the Zomber's circumstance be reasonably annoyed or disturbed
by the Desais' house?

Yes ☐ No ☒

5. Does the Desais' house harm the Zomers?

Yes ☐ No ☒

6. Is the Desais' house a substantial factor in causing the Zomers' harm?

Yes ☐ No ☒

7. Did the Zomers unreasonably delay in bringing their lawsuit?

Yes ☒ No ☐

8. Did the Zomers act with "unclean hands" in bringing their lawsuit?

Yes X No _____

9. Does the Desais' house violate the Municipal Code regarding size?

Yes _____ No X

10. Does the Desais' house violate the Municipal Code regarding height?

Yes _____ No X

11. If you answered "yes" to Question 1 and "yes" to either Question 2 or Question 3, please answer Question 12; OR If you answered "yes" to Questions 4, 5 and 6, please answer Question 12; OR If you answered "yes" to Question 9 or 10, please answer Question 12.

12. What are the Zomers' damages for the above questions?

Economic \$ 0

Past Non-Economic \$ 0

Future Non-Economic \$ 0

13. What amount of the above damages, if any, are attributable to the Municipal Code Violations. (Numbers 9 and 10)

\$ 0

Dated: 8/31/16

Amelia Simon
Foreperson

Ann-Marie Di Saia, Peter J Zomber and Cheryl Zomber
v.
Neil Desai and Anjini Desai
Case No. SC120821

FILED
Superior Court of California
County of Los Angeles

AUG 31 2016

Sherri R. Carter, Executive Officer/Clerk
By Laurie Pastel Deputy
Laurie Pastel

Ann-Marie Di Saia Special Verdict

WE THE JURY IN THE ABOVE-ENTITLED CASE, ANSWER THE QUESTIONS AS
SUBMITTED TO US AS FOLLOWS:

1. Does the Desais' house detract from Ann-Marie Di Saia's view?

Yes ___ No X

2. Does the Desais' house unreasonably obstruct Ann-Marie Di Saia's view?

Yes ___ No X

3. Would an ordinary person in Ann-Marie Di Saia's circumstance be reasonably annoyed or
disturbed by the Desais' house?

Yes ___ No X

4. Does the Desais' house harm Ann-Marie Di Saia?

Yes ___ No X

5. Is the Desais' house a substantial factor in causing Ann-Marie Di Saia's harm?

Yes ___ No X

6. Did Ann-Marie Di Saia unreasonably delay in bringing her lawsuit?

Yes X No ___

7. Does the Desais' house violate the Municipal Code regarding size?

Yes ___ No X

8. Does the Desais' house violate the Municipal Code regarding height?

Yes ___ No X

9. If you answered "yes" to Question 1, please answer Question 10; OR If you answered "yes" to Questions 3, 4 and 5, please answer Question 10; OR If you answered "yes" to Question 7, please answer Question 10.

10. What are Ann-Marie Di Saia's damages?

Past Non-Economic	\$ <u>0</u>
Future Non-Economic	\$ <u>0</u>

11. Did Ann-Marie Di Saia consent to the construction of the Desai's house?

Yes X
No

12. What amount of the above damages, if any, are attributable to the Municipal Code Violations. (Numbers 7 and 8)

\$ 0

Dated: 8/31/16

Ann-Marie Di Saia

Foreperson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
JURY INSTRUCTIONS COVER PAGE

Dept./Div.

West 9

CASE No.

SC126821

INSTRUCTIONS

☒ GIVEN
☒ REFUSED
☐ WITHDRAWN

Consisting of

34

Pages herein

Di Saia

Plaintiff,

vs.

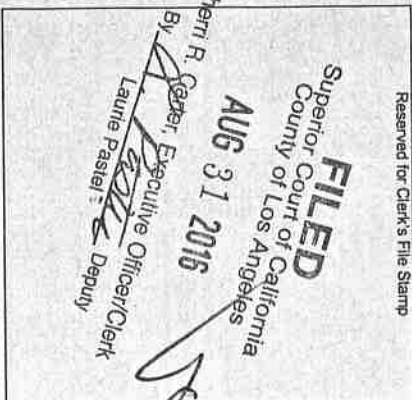
De Sai

Defendant.

Henry Newman

Judge Presiding.

JURY INSTRUCTIONS COVER PAGE



DUTIES OF THE JUDGE AND JURY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	_____ Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5000

Page 1 of 2

Members of the jury, you have now heard all the evidence and the closing arguments of the attorneys. The attorneys will have one last chance to talk to you in closing argument. But before they do, it is my duty to instruct you on the law that applies to this case. You must follow these instructions as well as those that I previously gave you. You will have a copy of my instructions with you when you go to the jury room to deliberate. I have provided each of you with your own copy of the instructions. I will display each instruction on the screen.

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial.

Do not allow anything that happens outside this courtroom to affect your decision. Do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. Do not do any research on your own or as a group. Do not use dictionaries or other reference materials.

These prohibitions on communications and research extend to all forms of electronic communications. Do not use any electronic devices or media, such as a cell phone or smart phone, PDA, computer, tablet device, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or website, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial. You must not let bias, sympathy, prejudice, or public opinion influence your decision.

~~If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.~~

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys have said/say anything

DUTIES OF THE JUDGE AND JURY

Instruction
No. 5000

Page 2 of 2

different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.

3

EVIDENCE

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judicial Official _____			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5002

Page 1 of 1

You must decide what the facts are in this case only from the evidence you have seen or heard during the trial, including any exhibits that I admit into evidence. Sworn testimony, documents, or anything else may be admitted into evidence. You may not consider as evidence anything that you saw or heard when court was not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggested that it was true. ~~However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.~~

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, ignore the question and do not guess as to why I sustained the objection. If the witness did not answer, you must not guess what he or she might have said. If the witness already answered, you must ignore the answer.

During the trial ~~you may have~~ granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.

3

4

WITNESSES

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5003

Page 1 of 1

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status, ~~or insert~~ any other impermissible form of bias.

4

5005. Multiple Parties

There are two (2) plaintiffs in this trial. You should decide the case of each plaintiff separately as if it were a separate lawsuit.

Each plaintiff is entitled to separate consideration of his or her own claims.

Unless I tell you otherwise, all instructions apply to each plaintiff and defendant.

6

200. Obligation to Prove—More Likely True Than Not True

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

201. Highly Probable - Clear and Convincing Proof

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

The Affirmative Defense of 'Consent'
must be proved by clear + convincing
proof

202. Direct and Indirect Evidence

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Direct evidence can prove a fact by itself. For example, if a witness testifies she saw a jet plane flying across the sky, that testimony is direct evidence that a plane flew across the sky. Some evidence proves a fact indirectly. For example, a witness testifies that he saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

203. Party Having Power to Produce Better Evidence

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

205. Failure to Explain or Deny Evidence

If a party failed to explain or deny evidence against him or her when he or she could reasonably be expected to have done so based on what he or she knew, you may consider the failure to explain or deny in evaluating that evidence.

It is up to you to decide the meaning and importance of the failure to explain or deny evidence against the party.

208. Deposition as Substantive Evidence

During the trial, you received deposition testimony that was read from the deposition transcript. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was presented to you in the same way as you consider testimony given in court.

12

REQUESTS FOR ADMISSIONS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<hr/> Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 210

Page 1 of 1

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

However, these matters must be considered true only as they apply to the party who admitted they were true.

12

212. Statements of a Party Opponent

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

- (1) Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.**
- (2) If you believe that the statement was made, do you believe it was reported accurately?**

You should view testimony about an oral statement made by a party outside the courtroom with caution.

219. Expert Witness Testimony

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- 1. The expert's training and experience;**
 - 2. The facts the expert relied on; and**
 - 3. The reasons for the expert's opinion.**
-

220. Experts—Questions Containing Assumed Facts

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

221. Conflicting Expert Testimony

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

223. Opinion Testimony of a Lay Witness

A witness who was not testifying as an expert gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

2021. Private Nuisance - Essential Factual Elements

Ann-Marie Di Saia and Cheryl and Peter Zomber claim that the Desais interfered with Ann-Marie Di Saia and/or Cheryl and Peter Zomber's use and enjoyment of their land. To establish this claim, Ann-Marie Di Saia and Cheryl and Peter Zomber must prove all of the following:

1. That Ann-Marie Di Saia and/or Cheryl and Peter Zomber owned their respective properties;
2. That the Desais, by acting or failing to act, created a condition or permitted a condition to exist that detracted from Ann-Marie Di Saia's view and/or Cheryl and Peter Zomber's view;
3. That this condition interfered with Ann-Marie Di Saia and/or Cheryl and Peter Zomber's use or enjoyment of their land;
4. That Ann-Marie Di Saia and/or Cheryl and Peter Zomber did not consent to the Desais' conduct;
5. That an ordinary person would be reasonably annoyed or disturbed by the Desais' conduct;
6. That Ann-Marie Di Saia and/or Cheryl and Peter Zomber were harmed;
7. That the Desais' conduct was a substantial factor in causing Ann-Marie Di Saia and/or Cheryl and Peter Zomber's harm; and
8. That the seriousness of the harm outweighs the public benefit of the Desais' conduct.

- Balancing-Test Factors-Seriousness of Harm and Public Benefit

In determining whether the seriousness of the harm to Ann-Marie Di Saia and/or Cheryl and Peter Zomber outweighs the public benefit of the Desais' conduct, you should consider a number of factors.

To determine the seriousness of the harm Ann-Marie Di Saia and/or Cheryl and Peter Zomber suffered, you should consider the following:

- a. The extent of the harm, meaning how much the condition the Desais' caused interfered with Ann-Marie Di Saia and/or Cheryl and Peter Zomber's use or enjoyment of their property, and how long that interference has lasted and will last in the future.
- b. The character of the harm, that is, whether the harm involved Ann-Marie Di Saia and/or Cheryl and Peter Zomber's personal discomfort or annoyance.
- c. The value that society places on the type of use or enjoyment invaded. The greater the social value of the particular type of use or enjoyment of land that is invaded, the greater is the seriousness of the harm from the invasion.
- d. The suitability of the type of use or enjoyment invaded to the nature of the locality. The nature of a locality is based on the primary kind of activity at that location, such as residential, industrial, or other activity.
- e. The extent of the burden (such as expense and inconvenience) placed on Ann-Marie Di Saia and/or Cheryl and Peter Zomber to avoid the harm.

To determine the public benefit of the Desais' conduct, you should consider:

- a. The value that society places on the primary purpose of the conduct that caused the interference. The primary purpose of the conduct means the Desais' main objective for engaging in the conduct. How much social value a particular purpose has depends on how much its achievement generally advances or protects the public good.
- b. The suitability of the conduct that caused the interference to the nature of the locality. The suitability of the conduct depends upon its compatibility to the primary activities carried on in the locality.
- c. The practicability or impracticality of preventing or avoiding the invasion.

2031. Damages for Annoyance and Discomfort

If you decide that Ann-Marie Di Saia and/or Cheryl and Peter Zomber have proved that the Desais committed a nuisance, Ann-Marie Di Saia and/or Cheryl and Peter Zomber may recover damages that would reasonably compensate each of them for the annoyance and discomfort caused by the injury to her or his peaceful enjoyment of the property that they occupied.

3902. Economic and Non-Economic Damages

The damages claimed by Ann-Marie Di Saia and/or Cheryl and Peter Zomber for the harms caused by Neil and Anjini Desai fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.

3903F Damage to Real Property (Economic Damage)

To recover damages for harm to property, the Zombers must prove the reduction in their property's value.

To determine the reduction in value, you must determine the fair market value of the property before the harm occurred and then subtract the fair market value of the property immediately after the harm occurred. The difference is the reduction of value.

"Fair market value" is the highest price for the property that a willing buyer would have paid to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.

3925. Arguments of Counsel Not Evidence of Damages

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

3934. Damages on Multiple Legal Theories

Ann-Marie Di Saia and Cheryl and Peter Zomber seek damages from Neil and Anjini Desai under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

You will be asked to decide whether Neil and Anjini Desai are liable to Ann-Marie Di Saia and/or Cheryl and Peter Zomber under the following legal theories:

1. Nuisance;
2. Constructing a house in violation of Conditions, Covenants and Restrictions; and
3. Constructing a house in violation of the Municipal Code.

The following items of damages are recoverable only once under all of the above legal theories:

1. The reduction in value to the Zomber's house;
2. Past and future Non-economic damages for Ann-Marie Di Saia; and
3. Past and future Non-economic damages for Cheryl and Peter Zomber.

Special Instruction No. 8 - Affirmative Defense - Unclean Hands

Instruction
No _____

Requested by Plaintiff		Requested by Defendant	X		
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		<div style="text-align: right;"> <hr/> Judge Nancy Newman </div>			
Withdrawn					

Instruction
No _____

The Desais contend that Peter and Cheryl Zomers' claims for violation of restrictive covenants are barred by the doctrine of unclean hands. Under the doctrine of unclean hands, a party cannot enforce restrictive covenants against another property owner if the party seeking enforcement has violated corresponding restrictions.

To succeed in proving the doctrine of unclean hands, the Desais must prove that the Zomers have violated similar restrictive covenants to those that the Zomers seek to enforce.

~~*Harrison v. Frye* (1957) 148 Cal.App.2d 626, 629-630; *Diederichsen v. Sutch* (1941) 47 Cal. App. 2d 646, 650.~~

PREDELIBERATION INSTRUCTIONS

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5009

Page 1 of 2

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense and experience in deciding whether testimony is true and accurate. However, during your deliberations, do not make any statements or provide any information to other jurors based on any special training or unique personal experiences that you may have had related to matters involved in this case. What you may know or have learned through your training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the ~~clerk~~/court attendant. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

At least nine jurors must agree on a verdict. When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the ~~clerk~~/court attendant that you are ready to present your verdict in the courtroom.

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

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PREDELIBERATION INSTRUCTIONS

Instruction
No. 5009

Page 2 of 2

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then, without further deliberations, make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

28

29

TAKING NOTES DURING THE TRIAL

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judicial Official _____			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5010

Page 1 of 1

If you have taken notes during the trial, you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

At the end of the trial, your notes will be collected and destroyed. ~~Collected and retained by the court but not as a part of the case record/specify other disposition.~~

29

READING BACK OF TRIAL TESTIMONY IN JURY ROOM

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	_____ Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5011

Page 1 of 1

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;
2. The subject of the testimony you would like to have read; and
3. The name of the attorney or attorneys asking the questions when the

testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

31

INTRODUCTION TO SPECIAL VERDICT FORM

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	_____ Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5012

Page 1 of 1

I will give you verdict forms with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the forms carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict forms in the order they appear. After you answer a question, the form tells you what to do next. At least 9 of you must agree on an answer before you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

All 12 of you must deliberate on and answer each question regardless of how you voted on any earlier question. Unless the verdict form tells all 12 jurors to stop and answer no further questions, every juror must deliberate and vote on all of the remaining questions.

When you have finished filling out the forms, your presiding juror must write the date and sign it at the bottom of the last page and then notify the [REDACTED] court attendant that you are ready to present your verdict in the courtroom.

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DEADLOCKED JURY ADMONITION

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	<div style="text-align: right;">Judicial Official</div>			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5013

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You should reach a verdict if you reasonably can. You have spent time trying to reach a verdict, and this case is important to the parties so that they can move on with their lives with this matter resolved.

~~If you are unable to reach a verdict, the case will have to be tried before another jury selected in the same manner and from the same community from which you were chosen and at additional cost to everyone.~~

Please carefully consider the opinions of all the jurors, including those with whom you disagree. Keep an open mind and feel free to change your opinion if you become convinced that it is wrong.

You should not, however, surrender your beliefs concerning the truth and the weight of the evidence. Each of you must decide the case for yourself and not merely go along with the conclusions of your fellow jurors.

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INSTRUCTION TO ALTERNATE JURORS ON SUBMISSION OF CASE TO JURY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	_____ Judicial Official			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5015

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The jury will soon begin ~~in~~ deliberating, but you are still alternate jurors and are bound by my earlier instructions about your conduct.

Until the jury is discharged, do not talk about the case or about any of the people or any subject involved in it with anyone, not even your family or friends, and not even with each other. Do not have any contact with the deliberating jurors. Do not decide how you would vote if you were deliberating. Do not form or express an opinion about the issues in this case, unless you are substituted for one of the deliberating jurors.

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POLLING THE JURY

Requested by Plaintiff	<input type="checkbox"/>	Requested by Defendant	<input type="checkbox"/>	Requested by	<input type="checkbox"/>
Given as Requested	<input type="checkbox"/>	Given as Modified	<input type="checkbox"/>	Given on Court's Motion	<input type="checkbox"/>
Refused	<input type="checkbox"/>	Judicial Official _____			
Withdrawn	<input type="checkbox"/>				

Instruction
No. 5017

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After your verdict is read in open court, you may be asked individually to indicate whether the verdict expresses your personal vote. This is referred to as "polling" the jury and is done to ensure that at least nine jurors have agreed to each decision.

The verdict forms that you will receive asks you to answer several questions. You must vote separately on each question. Although nine or more jurors must agree on each answer, it does not have to be the same nine for each answer. Therefore, it is important for each of you to remember how you have voted on each question so that if the jury is polled, each of you will be able to answer accurately about how you voted.

Each of you will be provided a draft copy of the verdict forms for your use in keeping track of your votes.

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