

1 Patricia L. Glaser (SBN 55668)
 2 *pglaser@glaserweil.com*
 3 Fred D. Heather (SBN 110650)
 4 *fheather@glaserweil.com*
 5 Aaron P. Allan (SBN 144406)
 6 *aallan@glaserweil.com*
 7 **GLASER WEIL FINK HOWARD**
 8 **AVCHEN & SHAPIRO LLP**
 9 10250 Constellation Blvd., 19th Floor
 10 Los Angeles, California 90067
 11 Telephone: (310) 553-3000
 12 Facsimile: (310) 556-2920

13 *Attorneys for Plaintiff*
 14 **LEGALZOOM.COM, INC.**

15 Forrest A. Hainline III (SBN 64166)
 16 *fhainline@goodwinprocter.com*
 17 Hong-An Vu (SBN 266268)
 18 *hvu@goodwinprocter.com*
 19 **GOODWIN PROCTER LLP**
 20 Three Embarcadero Center, 24th Floor
 21 San Francisco, California 94111
 22 Tel.: 415.733.6000
 23 Fax.: 415.677.9041

24 Michael T. Jones (SBN 290660)
 25 *mjones@goodwinprocter.com*
 26 **GOODWIN PROCTER LLP**
 27 135 Commonwealth Drive
 28 Menlo Park, California 94025-1105
 Tel.: 650.752.3100
 Fax.: 650.853.1038

[Add'l counsel listed in signature block]

Attorneys for Defendant
ROCKET LAWYER INCORPORATED

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

LEGALZOOM.COM, INC., a Delaware
 corporation,

Plaintiff,

v.

ROCKET LAWYER
 INCORPORATED, a Delaware
 corporation,

Defendant.

Case No. 2:12-cv-09942-GAF-AGR

**UNDISPUTED JURY
 INSTRUCTIONS**

PTC: November 10, 2014
 1:30 p.m.

Trial: December 9, 2014
 Judge: Judge Gary A. Feess

Courtroom: 740
 255 East Temple Street
 Los Angeles, CA 90012

Action Filed: November 20, 2012

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14 **39:** Interstate Commerce ⁴⁰*Authority:* 15 U.S.C. § 1125(a); *Summit Tech. v. High-*
15 *Line Medical Instruments, Co.*, 933 F. Supp. 918, 934 (C.D. Cal. 1996).

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UNDISPUTED INSTRUCTION NUMBER 1

DUTY OF JURY

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Authority: 9th Cir. Civ. Jury Instr. § 1.1B

1 **UNDISPUTED INSTRUCTION NUMBER 2**

2 **CONDUCT OF JURY**

3 I will now say a few words about your conduct as jurors.

4 First, keep an open mind throughout the trial, and do not decide what the
5 verdict should be until you and your fellow jurors have completed your deliberations
6 at the end of the case.

7 Second, because you must decide this case based only on the evidence
8 received in the case and on my instructions as to the law that applies, you must not
9 be exposed to any other information about the case or to the issues it involves during
10 the course of your jury duty. Thus, until the end of the case or unless I tell you
11 otherwise:

12 Do not communicate with anyone in any way and do not let anyone else
13 communicate with you in any way about the merits of the case or anything to
14 do with it. This includes discussing the case in person, in writing, by phone or
15 electronic means, via e-mail, text messaging, or any Internet chat room, blog,
16 Web site or other feature. This applies to communicating with your fellow
17 jurors until I give you the case for deliberation, and it applies to
18 communicating with everyone else including your family members, your
19 employer, the media or press, and the people involved in the trial, although
20 you may notify your family and your employer that you have been seated as a
21 juror in the case. But, if you are asked or approached in any way about your
22 jury service or anything about this case, you must respond that you have been
23 ordered not to discuss the matter and to report the contact to the court.

24 Because you will receive all the evidence and legal instruction you properly
25 may consider to return a verdict: do not read, watch, or listen to any news or
26 media accounts or commentary about the case or anything to do with it; do
27 not do any research, such as consulting dictionaries, searching the Internet or
28 using other reference materials; and do not make any investigation or in any

1 other way try to learn about the case on your own.

2 The law requires these restrictions to ensure the parties have a fair trial based
3 on the same evidence that each party has had an opportunity to address. A juror who
4 violates these restrictions jeopardizes the fairness of these proceedings, and a
5 mistrial could result that would require the entire trial process to start over. If any
6 juror is exposed to any outside information, please notify the court immediately.

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8 *Authority: 9th Cir. Civ. Jury Instr. § 1.12*

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UNDISPUTED INSTRUCTION NUMBER 3

OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

Authority: 9th Cir. Civ. Jury Instr. § 1.19

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UNDISPUTED INSTRUCTION NUMBER 4

CLAIMS AND DEFENSES

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

The plaintiff claims that the defendant has engaged in false advertising and unfair competition under federal and state laws. The plaintiff has the burden of proving these claims.

The defendant denies those claims and also contends that the plaintiff has engaged in false advertising and unfair competition under federal and state laws. The defendant has the burden of proof on these counterclaims and affirmative defenses.

The plaintiff denies defendants counterclaims and affirmative defenses.

Authority: 9th Cir. Civ. Jury Instr. § 1.2

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UNDISPUTED INSTRUCTION NUMBER 5

NO TRANSCRIPT

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

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

Authority: 9th Cir. Civ. Jury Instr. § 1.13

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UNDISPUTED INSTRUCTION NUMBER 6

TAKING NOTES

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the envelope in the jury room. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Authority: 9th Cir. Civ. Jury Instr. § 1.14

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UNDISPUTED INSTRUCTION NUMBER 7

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

Authority: 9th Cir. Civ. Jury Instr. § 1.6

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UNDISPUTED INSTRUCTION NUMBER 9

RULING ON OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Authority: 9th Cir. Civ. Jury Instr. § 1.10

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UNDISPUTED INSTRUCTION NUMBER 10

EVIDENCE FOR LIMITED PURPOSE

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Authority: 9th Cir. Civ. Jury Instr. § 1.8

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UNDISPUTED INSTRUCTION NUMBER 11

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Authority: 9th Cir. Civ. Jury Instr. § 1.9

1 **UNDISPUTED INSTRUCTION NUMBER 12**

2 **CREDIBILITY OF WITNESSES**

3 In deciding the facts in this case, you may have to decide which testimony to
4 believe and which testimony not to believe. You may believe everything a witness
5 says, or part of it, or none of it. Proof of a fact does not necessarily depend on the
6 number of witnesses who testify about it.

7 In considering the testimony of any witness, you may take into account:

- 8 1. The opportunity and ability of the witness to see or hear or know the
9 things testified to;
- 10 2. The witness's memory;
- 11 3. The witness's manner while testifying;
- 12 4. The witness's interest in the outcome of the case and any bias or
13 prejudice;
- 14 5. Whether other evidence contradicted the witness's testimony;
- 15 6. The reasonableness of the witness's testimony in light of all the
16 evidence; and
- 17 7. Any other factors that bear on believability.

18 The weight of the evidence as to a fact does not necessarily depend on the
19 number of witnesses who testify about it.

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21 *Authority:* 9th Cir. Civ. Jury Instr. § 1.11
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UNDISPUTED INSTRUCTION NUMBER 13
USE OF INTERROGATORIES OF A PARTY

Evidence will now be presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

Authority: 9th Cir. Civ. Jury Instr. § 2.10

Note: The parties seek to use this oral instruction before and only if interrogatories and answers are read to the jury; in such case, it may also be included in the concluding written instructions to the jury. The parties will not seek to use this oral instruction if answers to interrogatories are being used for impeachment only.

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UNDISPUTED INSTRUCTION NUMBER 14

DEPOSITION IN LIEU OF LIVE TESTIMONY

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of [witness] was taken on [date]. You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

Authority: 9th Cir. Civ. Jury Instr. § 2.4

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UNDISPUTED INSTRUCTION NUMBER 15

STIPULATIONS OF FACT

The parties have agreed to certain facts to be placed in evidence as [Exhibit ___] that will be read to you. You should therefore treat these facts as having been proved.

Authority: 9th Cir. Civ. Jury Instr. § 2.2

Note: Rocket Lawyer will only seek to use this instruction if the parties stipulate to any facts in advance of trial.

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UNDISPUTED INSTRUCTION NUMBER 16

EXPERT OPINION

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness’s education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority: 9th Cir. Civ. Jury Instr. § 2.11

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UNDISPUTED INSTRUCTION NUMBER 17

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries not received in evidence may be shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

Authority: 9th Cir. Civ. Jury Instr. § 2.12

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UNDISPUTED INSTRUCTION NUMBER 18
CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries may be received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Authority: 9th Cir. Civ. Jury Instr. § 2.13

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UNDISPUTED INSTRUCTION NUMBER 19
BENCH CONFERENCES AND RECESSES

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Of course, we will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney’s request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

Authority: 9th Cir. Civ. Jury Instr. § 1.18

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UNDISPUTED INSTRUCTION NUMBER 20

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

Authority: 9th Cir. Civ. Jury Instr. § 1.3

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UNDISPUTED INSTRUCTION NUMBER 21

BURDEN OF PROOF—CLEAR AND CONVINCING EVIDENCE

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that you must be persuaded by the evidence that the claim or defense is highly probable. This is a higher standard of proof than proof by a preponderance of the evidence.

You should base your decision on all of the evidence, regardless of which party presented it.

Authority: 9th Cir. Civ. Jury Instr. § 1.4

1 **UNDISPUTED INSTRUCTION NUMBER 22**

2 **ELEMENTS OF FALSE ADVERTISING (Lanham Act — Federal Law)**

3 Both parties have asserted claims against one another for false advertising
4 under the Lanham Act. To prove this claim, the party asserting the claim has the
5 burden of proving each of the following elements by a preponderance of the
6 evidence:

7 (1) the other party made a false or misleading statement of fact about its
8 own product or another’s product in commercial advertising;

9 (2) the statement actually deceived or has the tendency to deceive a
10 substantial segment of its audience;

11 (3) the deception is material, in that it is likely to influence the purchasing
12 decision;

13 (4) the other party caused its false or misleading statement to enter
14 interstate commerce; and

15 (5) the party asserting the claim has been or is likely to be injured as a
16 result of the false or misleading statement, either by direct diversion of sales from
17 itself to the other party or by a lessening of the goodwill associated with its
18 products.

19 I will now explain each of these elements in detail.

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21 *Authority: Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th
22 Cir. 1997); *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1054 (9th
23 Cir. 2008); 15 U.S.C. § 1125(a)(1)(B).

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UNDISPUTED INSTRUCTION NUMBER 24
PROOF REQUIRED FOR LITERAL FALSITY

A statement is literally false or false on its face when it explicitly states something that is untrue. If you determine that a defendant-party’s advertisement can reasonably be understood to convey more than one message, then the advertisement is not literally false. Only an unambiguous advertisement can be literally false.

Authority: Time Warner Cable, Inc. v. DIRECTV, Inc., 497 F.3d 144, 158 (2d Cir. 2007); Scotts Co. v. United Indust. Corp., 315 F.3d 264, 275 (4th Cir. 2002).

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UNDISPUTED INSTRUCTION NUMBER 25

REQUIREMENT TO CONSIDER ADVERTISEMENT IN CONTEXT

When deciding whether a defendant-party’s advertisement is false or misleading, you must consider the advertisement as a whole and in context. You should not consider only a portion of the advertisement in isolation.

Authority: Southland Sod Farms v. Stover Seed Co., 108 F.3d 1139 (9th Cir. 1997); *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995); Order Re: Pl’s Mot. Summ. J. at 7, ECF No. 44.

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UNDISPUTED INSTRUCTION NUMBER 26

STATEMENTS OF OPINION AND PUFFERY

Certain advertising claims are considered puffery and not statements of fact. Puffery is exaggerated advertising, blustering, and boasting upon which no reasonable buyer would rely. An example of puffery might be a claim of product superiority that is so vague or highly subjective it will be understood as a mere expression of the seller’s opinion. A misdescription of a specific or absolute characteristic of a product is not puffery.

Authority: Smithkline Beecham Consumer Healthcare, L.P. v. Johnson & Johnson-Merck, 906 F. Supp. 178, 185-86 (S.D.N.Y. 1995); Am. Home Prods. Corp. v. Johnson & Johnson, 654 F. Supp. 568, 590 (S.D.N.Y. 1987).

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UNDISPUTED INSTRUCTION NUMBER 27

PROOF OF CONSUMER DECEPTION

If an advertisement is misleading, a footnote or disclaimer that is so inconspicuously located or in such fine print that readers tend to overlook it will not remedy the misleading nature of that false claim.

Authority: Smithkline Beecham Consumer Healthcare, L.P. v. Johnson & Johnson-Merck, 906 F. Supp. 178, 185-86 (S.D.N.Y. 1995); Am. Home Prods. Corp. v. Johnson & Johnson, 654 F. Supp. 568, 590 (S.D.N.Y. 1987).

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UNDISPUTED INSTRUCTION NUMBER 28

PROOF OF CONSUMER DECEPTION

If you find that an advertisement is not literally false, a plaintiff-party can prevail on a Lanham Act claim only by demonstrating through reliable consumer surveys or market research that consumers actually were deceived.

Authority: Order Re: Pl’s Mot. Summ. J. at 10, ECF No. 44; *William H. Morris Co. v. Group W, Inc.*, 66 F.3d 255, 258 (9th Cir. 1995).

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UNDISPUTED INSTRUCTION NUMBER 29

REQUIREMENT TO SHOW INFLUENCE ON PURCHASING DECISION

If you find that a defendant-party’s advertisement is false or misleading, you must consider whether the plaintiff-party has demonstrated that the deception is “material,” or in other words, that the false or misleading nature of defendant-party’s advertisement is likely to influence the purchasing decision.

Authority: Rice v. Fox Broad. Co., 330 F.3d 1170, 1181 (9th Cir. 2003); *Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection Serv.*, 911 F.2d 242, 244 (9th Cir. 1990).

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UNDISPUTED INSTRUCTION NUMBER 30
**REQUIREMENT TO SHOW THAT DEFENDANT-PARTY’S CONDUCT
CAUSED HARM**

If you find that a defendant-party’s advertisement is materially false or misleading, you must consider whether the plaintiff-party has proven that it was harmed as a direct result of the materially false or misleading advertisement.

Authority: Rice v. Fox Broad. Co., 330 F.3d 1170, 1181 (9th Cir. 2003);
Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection Serv., 911 F.2d 242, 244 (9th Cir. 1990).

1 **UNDISPUTED INSTRUCTION NUMBER 31**

2 **DAMAGES - PROOF**

3 It is the duty of the Court to instruct you about the measure of damages. By
4 instructing you about damages, the Court does not mean to suggest for which party
5 your verdict should be rendered.

6 If you find for a plaintiff-party, you must determine the plaintiff-party's
7 damages. A plaintiff-party has the burden of proving damages by a preponderance
8 of the evidence. Damages means the amount of money that will reasonably and
9 fairly compensate a plaintiff-party for any injury the plaintiff-party can demonstrate
10 was caused by a defendant-party.

11 It is for you to determine what damages, if any, have been proved.

12 Your award must be based upon evidence and not upon speculation,
13 guesswork, or conjecture.

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15 *Authority: 9th Cir. Civ. Jury Instr. § 5.1*
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UNDISPUTED INSTRUCTION NUMBER 32

PLAINTIFF-PARTY’S ACTUAL DAMAGES – LOST PROFITS

Lost profits in this case are the profits that a plaintiff-party would have made on sales it lost due to the defendant-party’s deceptive advertising. Lost profits only exist if the plaintiff-party would have received those profits but for the deceptive advertising, and must be able to be calculated with reasonable certainty.

Authority: BAJI § 10:3 Special Instruction 5; Novell Inc. v. Network Trade Center, 25 F. Supp. 2d 1233, 1240 (D. Utah 1998); Morley-Murphy Co. v. Zenith Electronics Corp, 142 F.3d 373, 381 (7th Cir 1998).

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UNDISPUTED INSTRUCTION NUMBER 33

PROOF TO A REASONABLE CERTAINTY

A plaintiff-party’s right to recover is limited to damages that can be determined with reasonable certainty from the evidence. A plaintiff-party is not required to prove damages to a mathematical certainty (in other words, damages do not need to be exactly computed). A plaintiff-party, however, is not entitled to damages that are merely speculative, remote or uncertain. Damages are recoverable if you are satisfied that they may be reasonably approximated from the evidence.

Authority: BAJI § 10:3 Special Instruction 6; Richfield Oil Corp. v. Karseal Corp., 271 F. 2d 709, 728 n.4 (9th Cir. 1959).

1 **UNDISPUTED INSTRUCTION NUMBER 35**

2 **DUTY OF JURY**

3 Members of the Jury: Now that you have heard all of the evidence and the
4 arguments of the attorneys, it is my duty to instruct you as to the law of the case.
5 Each of you has received a copy of these instructions that you may take with you to
6 the jury room to consult during your deliberations.

7 You must not infer from these instructions or from anything I may say or do
8 as indicating that I have an opinion regarding the evidence or what your verdict
9 should be.

10 It is your duty to find the facts from all the evidence in the case. To those
11 facts you will apply the law as I give it to you. You must follow the law as I give it
12 to you whether you agree with it or not. And you must not be influenced by any
13 personal likes or dislikes, opinions, prejudices, or sympathy. That means that you
14 must decide the case solely on the evidence before you. You will recall that you
15 took an oath to do so.

16 In following my instructions, you must follow all of them and not single out
17 some and ignore others; they are all important.

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19 *Authority: 9th Cir. Civ. Jury Instr. § 1.1C*
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1 **UNDISPUTED INSTRUCTION NUMBER 36**

2 **DUTY TO DELIBERATE**

3 When you begin your deliberations, you should elect one member of the jury
4 as your presiding juror. That person will preside over the deliberations and speak
5 for you here in court.

6 You will then discuss the case with your fellow jurors to reach agreement if
7 you can do so. Your verdict must be unanimous.

8 Each of you must decide the case for yourself, but you should do so only after
9 you have considered all of the evidence, discussed it fully with the other jurors, and
10 listened to the views of your fellow jurors.

11 Do not hesitate to change your opinion if the discussion persuades you that
12 you should. Do not come to a decision simply because other jurors think it is right.
13 It is important that you attempt to reach a unanimous verdict but, of course, only if
14 each of you can do so after having made your own conscientious decision. Do not
15 change an honest belief about the weight and effect of the evidence simply to reach
16 a verdict.

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18 *Authority: 9th Cir. Civ. Jury Instr. § 3.1*
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UNDISPUTED INSTRUCTION NUMBER 38

RETURN OF VERDICT

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the answers on the form that has been given to you, sign and date it, and return it to the court.

Authority: 9th Cir. Civ. Jury Instr. § 3.3

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UNDISPUTED INSTRUCTION NUMBER 39

INTERSTATE COMMERCE

The parties agree that the statements at issue here were made in interstate commerce. Accordingly, you do not need to make a determination as to this element.

Authority: 15 U.S.C. § 1125(a); Summit Tech. v. High-Line Medical Instruments, Co., 933 F. Supp. 918, 934 (C.D. Cal. 1996).