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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RACHEL LOBATO,
12 Plaintiff,

13 v.

14 EVERARDO O. GOMEZ,
15 *individually and doing business as*
16 *El Sarape Restaurant, DOLORES B.*
17 *GOMEZ, individually and doing business as*
18 *El Sarape Restaurant,*

19 Defendants.
20

Case No. 1:15-cv-00686-EPG

DRAFT JURY INSTRUCTIONS

21 The jury instructions attached hereto were read to the jury in open court.
22

23 Dated: June __, 2017

MARIANNE MATHERLY, CLERK OF THE COURT

24 By: _____
25 Deputy Clerk
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1 **JURY INSTRUCTION NO. 1**

2 **CONDUCT OF THE 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 verdict should be
5 until you and your fellow jurors have completed your deliberations at the end of the case.

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

10 Do not communicate with anyone in any way and do not let anyone else
11 communicate with you in any way about the merits of the case or anything to do with it.
12 This includes discussing the case in person, in writing, by phone or electronic means,
13 via email, text messaging, or any internet chat room, blog, website or application,
14 including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn,
15 Snapchat, or any other forms of social media. This applies to communicating with your
16 fellow jurors until I give you the case for deliberation, and it applies to communicating
17 with everyone else including your family members, your employer, the media or press,
18 and the people involved in the trial, although you may notify your family and your
19 employer that you have been seated as a juror in the case, and how long you expect the
20 trial to last. But, if you are asked or approached in any way about your jury service or
21 anything about this case, you must respond that you have been ordered not to discuss
22 the matter and 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 media
26 accounts or commentary about the case or anything to do with it, although I have no
27 information that there will be news reports about this case; do not do any research, such
28 as consulting dictionaries, searching the Internet, or using other reference materials;

1 and do not make any investigation or in any other way try to learn about the case on
2 your own. Do not visit or view any place discussed in this case, and do not use Internet
3 programs or other devices to search for or view any place discussed during the trial.
4 Also, do not do any research about this case, the law, or the people involved—
5 including the parties, the witnesses or the lawyers—until you have been excused as
6 jurors. If you happen to read or hear anything touching on this case in the media, turn
7 away and report it to me as soon as possible.

8 These rules protect each party's right to have this case decided only on evidence that has been
9 presented here in court. Witnesses here in court take an oath to tell the truth, and the accuracy of their
10 testimony is tested through the trial process. If you do any research or investigation outside the
11 courtroom, or gain any information through improper communications, then your verdict may be
12 influenced by inaccurate, incomplete or misleading information that has not been tested by the trial
13 process. Each of the parties is entitled to a fair trial by an impartial jury, and if you decide the case
14 based on information not presented in court, you will have denied the parties a fair trial. Remember,
15 you have taken an oath to follow the rules, and it is very important that you follow these rules.

16 A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a
17 mistrial could result that would require the entire trial process to start over. If any juror is exposed to
18 any outside information, please notify the court immediately.
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JURY INSTRUCTION NO. 2

NO TRANSCRIPT AVAILABLE TO JURY

I urge you to pay close attention to the trial testimony as it is given. During deliberations you will not have a transcript of the trial testimony.

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1 **JURY INSTRUCTION NO. 5**

2 **OUTLINE OF TRIAL**

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

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

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

10 After that, you will go to the jury room to deliberate on your verdict.
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1 **JURY INSTRUCTION NO. 6**

2 **DUTY OF JURY**

3 Members of the Jury: Now that you have heard all of the evidence and the arguments of the
4 attorneys, it is my duty to instruct you on the law that applies to this case.

5 A copy of these instructions will be sent to the jury room for you to consult during your
6 deliberations.

7 It is your duty to find the facts from all the evidence in the case. To those facts you will apply
8 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
9 not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or
10 sympathy. That means that you must decide the case solely on the evidence before you. You will
11 recall that you took an oath to do so.

12 Please do not read into these instructions or anything that I may say or do or have said or done
13 that I have an opinion regarding the evidence or what your verdict should be.
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1 **JURY INSTRUCTION NO. 8**

2 **WHAT IS NOT EVIDENCE**

3 In reaching your verdict, you may consider only the testimony and exhibits received into
4 evidence. Certain things are not evidence, and you may not consider them in deciding what the facts
5 are. I will list them for you:

6 1. Arguments and statements by lawyers are not evidence. The lawyers are not
7 witnesses. What they have said in their opening statements, closing arguments and at other times is
8 intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them
9 differ from the way the lawyers have stated them, your memory of them controls.

10 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to
11 their clients to object when they believe a question is improper under the rules of evidence. You
12 should not be influenced by the objection or by the court's ruling on it.

13 3. Testimony that is excluded or stricken, or that you have been instructed to
14 disregard, is not evidence and must not be considered. In addition some evidence was received only
15 for a limited purpose; when I have instructed you to consider certain evidence only for a limited
16 purpose, you must do so and you may not consider that evidence for any other purpose.

17 4. Anything you may have seen or heard when the court was not in session is not
18 evidence. You are to decide the case solely on the evidence received at the trial.
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1 **JURY INSTRUCTION NO. 10**

2 **EXPERT OPINION**

3 You have heard testimony from expert witnesses who testified to opinions and the reasons for
4 their opinions. This opinion testimony is allowed, because of the education or experience of this
5 witness.

6 Such opinion testimony should be judged like any other testimony. You may accept it or reject
7 it, and give it as much weight as you think it deserves, considering the witness's education and
8 experience, the reasons given for the opinion, and all the other evidence in the case.
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1 **JURY INSTRUCTION NO. 12**

2 **CREDIBILITY OF WITNESSES**

3 In deciding the facts in this case, you may have to decide which testimony to believe and
4 which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

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

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

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

20 However, if you decide that a witness has deliberately testified untruthfully about something
21 important, you may choose not to believe anything that witness said. On the other hand, if you think
22 the witness testified untruthfully about some things but told the truth about others, you may accept the
23 part you think is true and ignore the rest.
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25 The weight of the evidence as to a fact does not necessarily depend on the number of witnesses
26 who testify. What is important is how believable the witnesses were, and how much weight you think
27 their testimony deserves.
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1 **JURY INSTRUCTION NO. 13**

2 **BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE**

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

6 You should base your decision on all of the evidence, regardless of which party presented it.
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In order to prevail on Claim 1, violation of the Americans with Disabilities Act (ADA), Plaintiff must prove the following:

1. Plaintiff is disabled within the meaning of the Americans with Disabilities Act (ADA);
2. The restaurant is open to the public;
3. Defendants discriminated against Plaintiff on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the restaurant.

1. Plaintiff is disabled within the meaning of the Americans with Disabilities Act (ADA);
2. The restaurant is open to the public;
3. Defendants discriminated against Plaintiff on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the restaurant.

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1 **JURY INSTRUCTION NO. 17**

2 **ADA CLAIM—DISCRIMINATION**

3 As you have been instructed, the third element of the ADA claim that the plaintiff must prove
4 is that the Defendants discriminated against Plaintiff on the basis of disability in the full and equal
5 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the
6 restaurant.

7 Defendants need not have intentionally discriminated against Plaintiff. Discrimination can
8 occur if Defendants were simply unaware of their obligations to bring their restaurant into compliance
9 with the Americans with Disabilities Act.
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JURY INSTRUCTION NO. 19

ADA ACCESSIBILITY GUIDELINES-ARCHITECTURAL BARRIERS

The Americans with Disabilities Act Accessibility Guidelines (“ADAAG”) contain a form of building codes that are applicable to businesses that are open to the public. A violation of the ADAAG is considered an architectural barrier.

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JURY INSTRUCTION NO. 20

DAMAGES UNDER CALIFORNIA LAW

If Plaintiff demonstrates that she encountered a condition that violated the Americans with Disabilities Act, she is automatically entitled to damages if she also demonstrates that her encounter with the barrier caused her any difficulty, discomfort or embarrassment.

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1 **JURY INSTRUCTION NO. 22**

2 **DUTY TO DELIBERATE**

3 Before you begin your deliberations, elect one member of the jury as your presiding juror. The
4 presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

5 You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your
6 verdict must be unanimous.

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

9 It is important that you attempt to reach a unanimous verdict but, of course, only if each of you
10 can do so after having made your own conscientious decision. Do not be unwilling to change your
11 opinion if the discussion persuades you that you should. But do not come to a decision simply
12 because other jurors think it is right, or change an honest belief about the weight and effect of the
13 evidence simply to reach a verdict.
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1 **JURY INSTRUCTION NO. 24**

2 **RETURN OF VERDICT**

3 A verdict form has been prepared for you. After you have reached unanimous agreement on a
4 verdict, your presiding juror should complete the verdict form according to your deliberations, sign
5 and date it, and advise the court that you are ready to return to the courtroom.
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