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8	UNITED STA	ATES DISTRICT COURT
9	EASTERN DIS	STRICT OF CALIFORNIA
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11	RACHEL LOBATO,	Case No. 1:15-cv-00686-EPG
12	Plaintiff,	DRAFT JURY INSTRUCTIONS
13	V.	DRAFT JORT MUTROCHOMB
14	EVERARDO O COMEZ	
15	individually and doing business as El Sarape Restaurant, DOLORES B. GOMEZ, individually and doing business as	
16	GOMEZ, <i>individually and doing business as</i> El Sarape Restaurant,	
17	Defendants.	
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21	The jury instructions attached hereto	were read to the jury in open court.
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23	Dated: June, 2017 MARIA	ANNE MATHERLY, CLERK OF THE COURT
24		Bv:
25		By: Deputy Clerk
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CONDUCT OF THE JURY

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

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

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

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case, and how long you expect the trial to last. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch or listen to any news or media accounts or commentary about the case or anything to do with it, although I have no information that there will be news reports about this case; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials;

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

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

A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

1	JURY INSTRUCTION NO. 2
2	NO TRANSCRIPT AVAILABLE TO JURY
3	I urge you to pay close attention to the trial testimony as it is given. During deliberations you
4	will not have a transcript of the trial testimony.
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JURY INSTRUCTION NO. 3 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 go to the jury room to decide the case. Do not let notetaking distract you. When you leave, your notes should be left in the jury room. No one will read your notes. Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

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.

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 6	expects the evidence will show. A party is not required to make an opening statement.
7	The plaintiff will then present evidence, and counsel for the defendant may cross-examine.
8	Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.
9	After the evidence has been presented, I will instruct you on the law that applies to the case
10	and the attorneys will make closing arguments.
11	After that, you will go to the jury room to deliberate on your verdict.
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JURY INSTRUCTION NO. 6 DUTY OF JURY Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be sent to the jury room for you to consult during your deliberations. 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. Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

1	JURY INSTRUCTION NO. 7
2	WHAT IS EVIDENCE
3	The evidence you are to consider in deciding what the facts are consists of:
4	1. The sworn testimony of any witness;
5	2. The exhibits that are admitted into evidence;
6	3. Any facts to which the lawyers have agreed; and
7	4. Any facts that I have instructed you to accept as proved.
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WHAT IS NOT EVIDENCE

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

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

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

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

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO.9 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.

1	JURY INSTRUCTION NO. 10
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3	EXPERT OPINION
4	You have heard testimony from expert witnesses who testified to opinions and the reasons for
5	their opinions. This opinion testimony is allowed, because of the education or experience of this
6	witness.
7	Such opinion testimony should be judged like any other testimony. You may accept it or reject
8	it, and give it as much weight as you think it deserves, considering the witness's education and
9	experience, the reasons given for the opinion, and all the other evidence in the case.
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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 that evidence. That means when you are deciding the case, you must not consider the stricken evidence for any purpose.

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 7	1. The opportunity and ability of the witness to see or hear or know the things	
8	testified to;	
° 9	2. The witness's memory;	
10	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; &	
15	8. Any other factors that bear on believability.	
16	Sometimes a witness may say something that is not consistent with something else he or she	
17	said. Sometimes different witnesses will give different versions of what happened. People often	
18	forget things or make mistakes in what they remember. Also, two people may see the same event but	
19	remember it differently. You may consider these differences, but do not decide that testimony is	
20	untrue just because it differs from other testimony.	
21	However, if you decide that a witness has deliberately testified untruthfully about something	
22	important, you may choose not to believe anything that witness said. On the other hand, if you think	
23	the witness testified untruthfully about some things but told the truth about others, you may accept the	
24	part you think is true and ignore the rest.	
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 7	You should base your decision on all of the evidence, regardless of which party presented it.
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1	JURY INSTRUCTION NO. 14
2	PARTIES AND CLAIMS
3	The Plaintiff in this case is Rachel Lobato, who is making the following claims:
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5	Claim 1: Violation of the Americans with Disabilities Act (ADA) against Defendants
6	Everardo O. Gomez and Dolores B. Gomez.
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8	Claim 2: Violation of California's Unruh Act against Defendants Everardo O. Gomez
9	and Dolores B. Gomez.
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11	Claim 3: Violation of California Health and Safety Code against Defendants Everardo
12	O. Gomez and Dolores B. Gomez.
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1	JURY INSTRUCTION NO. 15
2	CLAIM 1 – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (ADA)
3	In order to prevail on Claim 1, violation of the Americans with Disabilities Act (ADA),
4	Plaintiff must prove the following:
5	1. Plaintiff is disabled within the meaning of the Americans with Disabilities Act (ADA);
6	2. The restaurant is open to the public;
7 °	3. Defendants discriminated against Plaintiff on the basis of disability in the full and equal
8 9	enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of
9 10	the restaurant.
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1	JURY INSTRUCTION NO. 16
2	ADA CLAIM—PHYSICAL OR MENTAL IMPAIRMENT
3	ADA CLAIM—I HYSICAL OR MENTAL IMPAIRMENT As you have been instructed, the first element of the ADA claim that the plaintiff must prove is
4	that the plaintiff has a recognized disability under the ADA. A "disability" under the ADA is a
5	physical impairment that substantially limits one or more of the major life activities of such individual.
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7	The terms disability and physical impairment include any physiological disorder, or condition,
8	affecting the musculoskeletal system.
9	Major life activities are the normal activities of living that a nondisabled person can do with
10	little or no difficulty, such as walking.
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1	JURY INSTRUCTION NO. 17
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3	ADA CLAIM—DISCRIMINATION
4	As you have been instructed, the third element of the ADA claim that the plaintiff must prove
5	is that the Defendants discriminated against Plaintiff on the basis of disability in the full and equal
6	enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the
7	restaurant.
8	Defendants need not have intentionally discriminated against Plaintiff. Discrimination can
9	occur if Defendants were simply unaware of their obligations to bring their restaurant into compliance
10	with the Americans with Disabilities Act.
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JURY INSTRUCTION NO. 18 1 2 ADA CLAIM-DISCRIMINATION AND READILY ACHIEVABLE 3 Discrimination also includes the discriminatory effects of architectural barriers. Discrimination 4 can include the failure to remove architectural barriers in existing facilities where such removal is 5 readily achievable. 6 Plaintiff bears the initial burden of proving the existence of the architectural barrier and 7 suggesting a method of removing the barrier that is readily achievable. 8 9 If the plaintiff satisfies this burden, the defendant then bears the ultimate burden of proving 10 that the suggested method of removal is not readily achievable. 11 The term "readily achievable" means easily accomplishable and able to be carried out without 12 much difficulty or expense. In determining whether an action is readily achievable, factors to be 13 considered include--14 15 (A) the nature and cost of the action needed under this chapter; 16 (B) the overall financial resources of the facility or facilities involved in the action; the number 17 of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of 18 such action upon the operation of the facility; 19 20 (C) the overall financial resources of the covered entity; the overall size of the business of a 21 covered entity with respect to the number of its employees; the number, type, and location of its 22 facilities: and 23 (D) the type of operation or operations of the covered entity, including the composition, 24 structure, and functions of the workforce of such entity; the geographic separateness, administrative or 25 fiscal relationship of the facility or facilities in question to the covered entity. 26 27 28 20

1	JURY INSTRUCTION NO. 19
2	ADA ACCESSIBILITY GUIDELINES-ARCHITECTURAL BARRIERS
3	The Americans with Disabilities Act Accessibility Guidelines ("ADAAG") contain a form of
4	building codes that are applicable to businesses that are open to the public. A violation of the ADAAG
5	is considered an architectural barrier.
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1	JURY INSTRUCTION NO. 20
2	DAMAGES UNDER CALIFORNIA LAW
3	If Plaintiff demonstrates that she encountered a condition that violated the Americans with
4	Disabilities Act, she is automatically entitled to damages if she also demonstrates that her encounter
5	with the barrier caused her any difficulty, discomfort or embarrassment.
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1	JURY INSTRUCTION NO. 21	
2	STIPULATIONS OF FACT	
3	The parties have agreed to certain that will be read to you. You must therefore treat these facts	s
4	as having been proved.	
5	1. The restaurant is open to the public.	
6	2. On January 11, 2015, there was no accessible parking provided at the restaurant.	
7	3. On January 11, 2015, the opening doorway leading to the hallway containing	
8	the entrance into the women's restroom was less than 32 inches wide.	
9	4. On January 11, 2015, the women's restroom did not provide a 60 inch clear	
10	diameter circle of maneuvering space, or a T-shaped space for 180 degree turns.	
11 12	5. On January 11, 2015, the women's restroom had no rear grab bar behind the	
12	toilet.	
13	6. On January 11, 2015, the sink in the women's restroom had a cabinet	
15	underneath it which did not allow for knee and toe clearance.	
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DUTY TO DELIBERATE

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

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

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

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

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer or my staff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

1	JURY INSTRUCTION NO. 24
2	R eturn 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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