

1 employer. Since each of these elements is undisputed, they have
2 been eliminated from the attached liability instructions. See
3 Final Pretrial Order 6:2-5, ECF No. 94. The goal is to "help the
4 jurors to concentrate on the question[s] at hand." Achor v.
5 Riverside Golf Club, 117 F.3d 339, 341 (7th Cir. 1997).

6 The parties' proposed "disparate treatment"
7 instruction, which is based upon CACI No. 2500, will not be given
8 since it is duplicative of the parties' "disability
9 discrimination" instruction, which is specific to disparate
10 treatment based upon a disability.

11 The parties' proposed "wrongful discharge/demotion in
12 violation of public policy" instruction utilizes different
13 terminology for the element that requires Plaintiff to show a
14 causal connection between Plaintiff's termination and his harm
15 than the other proposed liability instructions. This instruction
16 uses the word "cause," whereas each of the other proposed
17 liability instructions uses the phrase "substantial factor." It
18 appears that the different terminology used for this element is
19 without legal significance and could be confusing to the jury;
20 therefore, the attached instructions use "substantial factor"
21 consistently throughout and define that term once as follows: "A
22 'substantial factor' in causing harm is a factor that a
23 reasonable person would consider to have contributed to the harm.
24 It must be more than a remote or trivial factor. It does not have
25 to be the only cause of the harm." The definition is based upon
26 CACI Instruction No. 430 - "Causation: Substantial Factor."

27 The last paragraph of the parties' proposed
28 "accommodation" instruction has been deleted. Its content has

1 been incorporated into Instruction No. 10, which defines the
2 terms "major life activity," "limits," and "difficult" consistent
3 with California Code of Regulations section 11065(1).

4 The parties' proposed "adverse employment action"
5 instruction will not be given since that phrase is not used in
6 the attached instructions. It is understood, and the attached
7 instructions reflect, that the adverse employment action at issue
8 is Plaintiff's termination.

9 Plaintiff's proposed instructions Nos. 1 and 2 have
10 been incorporated into Instruction No. 9, which is the liability
11 instruction on Plaintiff's retaliation claim.

12 Plaintiff's proposed instruction No. 3 will not be
13 given as worded, since it is not supported by the cited
14 authorities. However, Instruction No. 9 includes a paragraph
15 concerning Plaintiff's ability to prove an employer's retaliatory
16 intent using direct or circumstantial evidence, which is
17 consistent with Colarossi v. Coty US Inc., 97 Cal. App. 4th 1142,
18 1153 (2002).

19 Plaintiff's proposed instruction No. 4 will not be
20 given. As stated above, Instruction No. 10 defines "major life
21 activity," "limits" and "difficulty" as defined in the California
22 Code of Regulations. Further, there is no need to define "mental
23 disability" since it is not used in the attached instructions.
24 Instead, the attached instructions reference Plaintiff's Post
25 Traumatic Stress Disorder specifically.

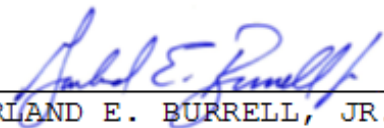
26 The parties have proposed inadequate damages
27 instructions. The attached proposed instructions include damages
28 instructions which are based upon the introductory language in

1 the Ninth Circuit's Model Civil Jury Instruction No. 5.1 (Damages
2 - Proof), and CACI Instructions Nos. 2433 (Wrongful Discharge in
3 Violation of Public Policy - Damages), 3900 (Introduction to Tort
4 Damages - Liability Contested), 3902 (Economic and Noneconomic
5 Damages), 3903 (Items of Economic Damage), 3903C (Past and Future
6 Lost Earnings), 3904 (Present Cash Value), 3905 (Items of
7 Noneconomic Damage), and 3905A (Physical Pain, Mental Suffering,
8 and Emotional Distress).

9 **B. Proposed Verdict Form**

10 The attached general verdict form will be used rather
11 than the parties' proposed special verdict forms. See Floyd v.
12 Laws, 929 F.2d 1390, 1395 (9th Cir. 1991) (stating "[a]s a
13 general rule, the court has complete discretion over whether to
14 have the jury return a special verdict or a general verdict").

15 Dated: February 21, 2014

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20 GARIAND E. BURRELL, JR.
21 Senior United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRIS ROBINSON,
Plaintiff,
v.
HD SUPPLY, INC.,
Defendant.

No. 2:12-cv-00604-GEB-AC

VOIR DIRE

Thank you for your presence and anticipated cooperation in the jury selection questioning process we are about to begin. This process concerns the right to a trial by jury, which is a right that the founders of this nation considered an important component of our constitutional system.

The court personnel who will assist me in this trial are on the platform below me. The Courtroom Deputy is Shani Furstenau. She is on the platform below me on my left side. Next to her is the Certified Court Reporter, [_____].

1 We are about to begin what is known as voir dire. The
2 purpose of voir dire is to ascertain whether you can be a fair
3 and impartial juror on this case. Near or at the end of the
4 process, each party can use a certain amount of what are called
5 peremptory challenges, which excuse a potential juror from
6 sitting as a juror on this case. A potential juror can also be
7 excused for other reasons.
8

9 1. Ms. Furstenau, please administer the oath to the
10 panel.

11 2. Counsel, the Jury Administrator randomly selected
12 potential jurors and placed their names on the sheet that has
13 been given to each party in the numerical sequence in which they
14 were randomly selected. Each juror has been placed in his or her
15 randomly-selected seat.
16

17 3. I will ask a series of questions to the jurors as
18 a group. If you have a response, please raise your hand or the
19 number you've been given, which reflects your seat number.
20 Generally, you will be given an opportunity to respond in
21 accordance with the numerical order in which you are seated, with
22 the juror in the lowest numbered seat responding first. If no
23 hand is raised, I will simply state "no response" for the record
24 and then ask the next question. If you know it is your turn to
25 respond to a question, you may respond before I call your name or
26 your seat number, by stating your last name or just your seat
27
28

1 number, then your response. That should expedite the process.

2 4. This is a civil case concerning Defendant's
3 termination of Plaintiff's employment as an assistant
4 transportation manager. Plaintiff alleges the following claims
5 against Defendant: discrimination based upon his alleged Post
6 Traumatic Stress Disorder, failure to provide a reasonable
7 accommodation for his alleged Post Traumatic Stress Disorder, and
8 retaliation for complaining to Defendant that dispatching
9 employees to drive from Defendant's Sacramento Distribution
10 Center to the Salinas Distribution Center would result in
11 violations of hours of service regulations. Plaintiff further
12 alleges that this referenced conduct constitutes termination in
13 violation of public policy. Defendant denies these allegations.
14
15

16 5. Raise your hand if you have any knowledge of the
17 facts or events in this case or if there is anything about the
18 allegations which causes you to feel that you might not be a fair
19 juror in this case.

20 6. Raise your hand if there is any reason why you
21 will not be able to give your full attention to this case.
22

23 7. Raise your hand if you will not be able to decide
24 this case based solely on the evidence presented at the trial or
25 if you are opposed to judging a witness's credibility.

26 8. Raise your hand if you will not apply the law I
27 will give you if you believe a different law should apply.
28

1 9. The parties have informed me that the evidence and
2 argument portion of the trial should be completed in
3 approximately 3-6 court days, after which the case will be
4 submitted to the jury for jury deliberation. We will be in trial
5 on Tuesdays, Wednesdays, and Thursdays from 9:00 a.m. to about
6 4:30 p.m. But as soon as you begin jury deliberation, you will be
7 expected to deliberate every day, except weekends, from 9:00 a.m.
8 to about 4:30 p.m., until you complete your deliberation.

9
10 If you cannot participate as a juror during these
11 times, raise your hand.

12 10. Would Plaintiff's counsel introduce
13 [himself/themselves], [his/their] client, and indicate any
14 witness that [his/their] client may choose to call.

15
16 11. Defendant's counsel now has the opportunity to do
17 the same thing.

18 Raise your hand if you know or have had any
19 interaction with any person just introduced or named.

20 12. Raise your hand if you have ever served as a juror
21 in the past.

22 State whether it was a civil or criminal case, and
23 state whether the jury reached a verdict, but do not state the
24 actual verdict reached.

25
26 13. Raise your hand if you have had any experience or
27 are aware of anything that could have a bearing on your ability
28

1 to be a fair and impartial juror in this case.

2 14. Now, I am going to ask you to put yourselves in
3 the position of each lawyer and party in this case. Raise your
4 hand if you have information that you think should be shared
5 before each side is given an opportunity to exercise what are
6 called peremptory challenges.
7

8 15. The Courtroom Deputy Clerk will give juror number
9 one a sheet on which there are questions that I want each of you
10 to answer. Please pass the sheet to the juror next to you after
11 you answer the questions. The sheet asks you to state:

12 Your name and your educational background and the
13 educational background of any person residing with you; and

14 Your present and former occupations and the
15 present and former occupations of any person residing with you.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRIS ROBINSON,
Plaintiff,
v.
HD SUPPLY, INC.,
Defendant.

No. 2:12-cv-00604-GEB-AC

PRELIMINARY JURY INSTRUCTIONS

Preliminary Instruction No. 1

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 that I have an opinion regarding the evidence or what your verdict should be from these instructions or from anything I may say or do.

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.

Preliminary Instruction No. 2

I am now going to give you jury admonitions that you must remember. When we take recesses, I may reference these admonitions by telling you to remember the admonitions or something similar to that. You are required to follow these admonitions whether or not I remind you to remember them:

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 e-mail, Facebook, text messaging, or any Internet chat room, blog, website, App, or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone

1 else including your family members, your employer, and the people
2 involved in the trial, although you may notify your family and
3 your employer that you have been seated as a juror in the case.
4 But, if you are asked or approached in any way about your jury
5 service or anything about this case, you must respond that you
6 have been ordered not to discuss the matter and to report the
7 contact to the court.
8

9 Because you will receive all the evidence and legal
10 instruction you properly may consider to return a verdict: do not
11 read, watch, or listen to any news or media accounts or
12 commentary about the case or anything to do with it; do not do
13 any research, such as consulting dictionaries, searching the
14 Internet, or using other reference materials; and do not make any
15 investigation or in any other way try to learn about the case on
16 your own. The law requires these restrictions to ensure the
17 parties have a fair trial based on the same evidence that each
18 party has had an opportunity to address.
19

20 Third, if you need to communicate with me, simply give
21 a signed note to my courtroom clerk, or to the court reporter if
22 my courtroom clerk is not present, who will give it to me.
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Preliminary Instruction No. 3

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

12
13 Sometimes I may order that evidence be stricken from
14 the record and that you disregard or ignore the evidence. That
15 means that when you are deciding the case, you must not consider
16 the evidence that I told you to disregard.
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1 Preliminary Jury Instruction No. 4

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3 In reaching your verdict, you may consider only the
4 testimony and exhibits received into evidence. Certain things are
5 not evidence, and you may not consider them in deciding what the
6 facts are. I will list them for you:
7

8 First, arguments and statements by lawyers are not
9 evidence. The lawyers are not witnesses. What they will say in
10 their opening statements, closing arguments, and at other times
11 is intended to help you interpret the evidence, but it is not
12 evidence. If the facts as you remember them differ from the way
13 the lawyers have stated them, your memory of them controls.
14

15 Second, questions and objections by the lawyers are not
16 evidence. Attorneys have a duty to object when they believe a
17 question is improper under the rules of evidence. You should not
18 be influenced by the objection or by the court's ruling on it.

19 Third, testimony that has been excluded or stricken, or
20 that you have been instructed to disregard, is not evidence and
21 must not be considered. In addition, sometimes testimony and
22 exhibits are received only for a limited purpose; if I give a
23 limiting instruction, you must follow it.
24

25 Fourth, anything you see or hear when the court is not
26 in session is not evidence. You are to decide the case solely on
27 the evidence received at the trial.
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Preliminary Instruction No. 5

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3 During deliberations, you will have to make your
4 decision based on what you recall of the evidence. You will not
5 have a transcript of the trial. I urge you to pay close attention
6 to the testimony as it is given.
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8 If at any time during the trial you cannot hear what is
9 said or see what is shown, let me know so that I can correct the
10 problem.
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Preliminary Instruction No. 6

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3 If you wish, you may take notes to help you remember
4 the evidence. If you do take notes, please keep them to yourself
5 until you and your fellow jurors go to the jury room to decide
6 the case. Do not let note-taking distract you. When you leave,
7 your notes shall be left on the seat on which you are seated.
8

9 Whether or not you take notes, you should rely on your
10 own memory of the evidence. Notes are only to assist your memory.
11 You should not be overly influenced by your notes or those of
12 your fellow jurors.
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Preliminary Instruction No. 7

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3 From time to time during the trial, it may become
4 necessary for me to talk with the attorneys out of the hearing of
5 the jury, either by having a conference at the bench when the
6 jury is present in the courtroom, or by calling a recess. Please
7 understand that while you are waiting, we are working. The
8 purpose of these conferences is not to keep relevant information
9 from you, but to decide how certain evidence is to be treated
10 under the rules of evidence and to avoid confusion and error.
11

12 We will, of course, do what we can to keep the number
13 and length of these conferences to a minimum. I may not always
14 grant an attorney's request for a conference. Do not consider my
15 granting or denying a request for a conference as any indication
16 of my opinion of the case or of what your verdict should be.
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Preliminary Instruction No. 8

The court accepts as having been proved the following facts, even though no evidence has been introduced on the subjects. You should therefore treat these facts as having been proved.

Defendant hired Plaintiff on March 24, 2008;

Plaintiff was terminated on February 10, 2010;

The number of statute miles between Defendant's Sacramento Distribution Center and its Salinas Distribution Center is 130 statute miles;

The number of air miles between Defendant's Sacramento Distribution Center and its Salinas Distribution Center is 113 air miles; and

A "statute mile" is measured as 5,280 feet. An "air mile" is measured as 6,076 feet under the Federal Motor Carrier Safety Administration Act.

Preliminary Instruction No. 9

The next phase of the trial will now begin. 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.

Plaintiff will then present evidence, and counsel for the Defendant may cross-examine. Then Defendant may present evidence, and counsel for 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.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRIS ROBINSON,
Plaintiff,
v.
HD SUPPLY, INC.,
Defendant.

No. 2:12-cv-00604-GEB-AC

CLOSING JURY INSTRUCTIONS

Instruction No. 1

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3 Members of the jury, now that you have heard all the
4 evidence and the arguments of the parties, it is my duty to
5 instruct you on the law which applies to this case. Each of you
6 is in possession of a copy of these jury instructions, which you
7 may take into the jury room for your use if you find it
8 necessary.
9

10 It is your duty to find the facts from all the evidence
11 in the case. To those facts you must apply the law as I give it
12 to you. You must follow the law as I give it to you whether you
13 agree with it or not. And you must not be influenced by any
14 personal likes or dislikes, opinions, prejudices or sympathy.
15 That means that you must decide the case solely on the evidence
16 before you and according to the law. You will recall that you
17 took an oath promising to do so at the beginning of the case.
18

19 In following my instructions, you must follow all of
20 them and not single out some and ignore others; they are all
21 equally important.
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Instruction No. 2

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

the sworn testimony of any witness;

the exhibits that are received into evidence; and

any facts to which the parties have agreed.

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Instruction No. 3

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as a 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.

Instruction No. 5

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3 Plaintiff has burden of proving each of his claims by a
4 preponderance of the evidence. This means you must be persuaded
5 by the evidence that the claim is more probably true than not
6 true.
7

8 You should base your decision on all of the evidence,
9 regardless of which party presented it.
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1 Reasonable accommodations may include the following:

2 Making the workplace readily accessible to and usable

3 by employees with disabilities;

4 Changing job responsibilities or work schedules;

5 Reassigning the employee to a vacant position;

6 Modifying or providing equipment or devices;

7 Modifying tests or training materials;

8 Providing qualified interpreters or readers; or

9 Providing other similar accommodations for an

10 individual with a disability.

11

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13 If more than one accommodation is reasonable, an

14 employer makes a reasonable accommodation if it selects one of

15 those accommodations in good faith.

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An employee is not required to use special words when complaining of conduct that he reasonably and in good faith believes is unlawful for the complaint to be a protected activity. The relevant question is whether the employee's communication to the employer sufficiently conveyed the employee's reasonable concern that the employer is acting in an unlawful manner.

Both direct and circumstantial evidence can be used to show an employer's intent to retaliate. Direct evidence of retaliation may consist of remarks made by decision makers showing a retaliatory motive. Circumstantial evidence typically relates to factors such as an employee's job performance, the timing of events, and how the employer treated the employee in comparison to other similarly situated workers.

1 Plaintiff would be able to perform with little or no difficulty
2 in the absence of a disability.

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1 Instruction No. 11

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3 In deciding whether a job duty is "essential," you may
4 consider, among other factors, the following:

5 Whether the reason the job exists is to perform that
6 duty;

7
8 Whether there is a limited number of employees
9 available who can perform that duty;

10 Whether the job duty is highly specialized so that the
11 person currently holding the position was hired for his or her
12 expertise or ability to perform the particular duty.

13
14 Evidence of whether a particular duty is "essential"
15 includes, but is not limited to, the following:

16 Defendant's judgment as to which functions are
17 essential;

18 Defendant's written job descriptions prepared before
19 advertising or interviewing applicants for the job;

20 The amount of time spent on the job performing the
21 duty;

22 The consequences of not requiring the person currently
23 holding the position to perform the duty;

24 The terms of a collective bargaining agreement;

25 The work experiences of past persons holding the job;

1 The current work experience of persons holding similar
2 jobs;

3 and reference to the importance of the job in prior
4 performance reviews.
5

6 "Essential job duties" do not include the marginal
7 duties of the position. "Marginal duties" are those that, if not
8 performed would not eliminate the need for the job, or those that
9 could be readily performed by another employee, or those that
10 could be performed in another way.
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Instruction No. 12

A "substantial motivating reason" is a reason that actually contributed to Plaintiff's termination. It must be more than a remote or trivial reason. It does not have to be the only reason motivating the termination.

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If you find that Defendant terminated Plaintiff only for a discriminatory and/or retaliatory reason, you will be asked to determine the amount of damages that Plaintiff is entitled to recover. If, however, you find that Defendant would have terminated Plaintiff anyway because of insubordination, then Plaintiff will not be entitled to damages.

Instruction No. 14

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3 In California, employment is presumed to be "at will."
4 That means that an employer may terminate an employee for no
5 reason, or for a good, bad, mistaken, unwise, or even unfair
6 reason, as long as its action is not for a discriminatory and/or
7 retaliatory reason.
8

Instruction No. 15

A "substantial factor" in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

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Instruction No. 16

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

If you decide that Plaintiff has proved any of his claims against Defendant, you must also decide how much money will reasonably compensate Plaintiff for the harm. This compensation is called "damages." Plaintiff has the burden of proving damages by a preponderance of the evidence.

Plaintiff does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

Instruction No. 17

The damages claimed by Plaintiff fall into two categories, which are called economic damages and non-economic damages. You will be asked on the verdict form to state the categories of damages separately.

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Instruction No. 18

The following are the specific items of economic damages claimed by Plaintiff:

Past and future loss of wages and benefits.

To recover damages for past lost wages and benefits, Plaintiff must prove the amount of wages and benefits that he has lost to date.

To recover damages for future lost wages and benefits, Plaintiff must prove the amount of wages and benefits he will be reasonably certain to lose in the future as a result of the harm caused by Defendant.

Any award for future economic damages should be reduced to present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future. Defendant must prove the amount by which future economic damages should be reduced to present value.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide Plaintiff with the amount of his future economic damages.

1 In determining the period that Plaintiff's employment
2 was reasonably certain to have continued, you should consider
3 such things as:

4 Plaintiff's age, work performance, and intent to
5 continue employment with Defendant;

6 Defendant's prospects for continuing the operations
7 involving Plaintiff; and

8 Any other factor that bears on how long Plaintiff would
9 have continued to work.
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1 Instruction No. 19

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3 The following are the specific items of non-economic
4 damages claimed by Plaintiff:

5 Past and future emotional pain and suffering.
6

7
8 No fixed standard exists for deciding the amount of
9 these non-economic damages. You must use your judgment to decide
10 a reasonable amount, if any, based on the evidence and your
11 common sense.
12

13 To recover for future non-economic damages, Plaintiff
14 must prove that he is reasonably certain to suffer that harm in
15 the future.
16

17
18 For future non-economic damages, determine the amount
19 in current dollars paid at the time of judgment that will
20 compensate Plaintiff for future noneconomic harm, if any. Any
21 award for future non-economic damages should not be further
22 reduced to present cash value.
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Instruction No. 20

Plaintiff is seeking damages from Defendant in several claims. However, each item of damages may be awarded only once, regardless of the number of claims on which Plaintiff may prevail.

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"Malice" means that Defendant acted with intent to cause injury or that Defendant's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Defendant's conduct was despicable and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

Instruction No. 22

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3 When you begin your deliberations, you should elect one
4 member of the jury as your presiding juror. That person will
5 preside over the deliberations and speak for you here in court.
6

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

10 Each of you must decide the case for yourself, but you
11 should do so only after you have considered all of the evidence,
12 discussed it fully with the other jurors, and listened to the
13 views of your fellow jurors.
14

15 Do not be afraid to change your opinion if the
16 discussion persuades you that you should. Do not come to a
17 decision simply because other jurors think it is right.

18 It is important that you attempt to reach a unanimous
19 verdict but, of course, only if each of you can do so after
20 having made your own conscientious decision. Do not change an
21 honest belief about the weight and effect of the evidence simply
22 to reach a verdict.
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Instruction No. 23

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3 A verdict form has been prepared for you. After you
4 have reached unanimous agreement on the verdict, your foreperson
5 will fill in the form that will be given to you, sign and date
6 it, and advise the United States Marshal's representative outside
7 your door that you are ready to return to the courtroom.
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Instruction No. 24

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3 If it becomes necessary during your deliberations to
4 communicate with me, you may send a note through the United
5 States Marshal's representative, signed by your foreperson or by
6 one or more members of the jury. No member of the jury should
7 ever attempt to communicate with me except by a signed writing;
8 and I will communicate with any member of the jury on anything
9 concerning the case only in writing, or here in open court. If
10 you send out a question, I will consult with the parties before
11 answering it, which may take some time. You may continue your
12 deliberations while waiting for the answer to any question.
13 Remember that you are not to tell anyone – including me – how the
14 jury stands, numerically or otherwise, until after you have
15 reached a unanimous verdict or have been discharged. Do not
16 disclose any vote count in any note to the court.
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