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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

GARY ARDEN,  
Plaintiff,  
v.  
FRANK KASTELL,  
Defendant.

Case No. 10-cv-00436 NC

**PRELIMINARY JURY INSTRUCTIONS**

Jury Trial: October 14, 2014

**I. Introduction**

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

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. You will be allowed to keep this set throughout the trial to which to refer. This set of instructions is not to be taken home and must remain in the jury room when you leave in the evenings. At the end of the trial, I will give you a final set of instructions. It is the final set of instructions which will govern your deliberations.

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.

Case No. 10-cv-00436 NC  
PRELIMINARY JURY  
INSTRUCTIONS

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

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

## 8 **II. Summary of the Claims and Defenses in this Case**

9 Gary Arden brings his claim under the federal statute, 42 U.S.C. § 1983, which provides  
10 that any person or persons who, under color of law, deprives another of any rights, privileges, or  
11 immunities secured by the Constitution or laws of the United States shall be liable to the injured  
12 party.

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

15 This case is about two men who worked at San Francisco Airport. In February 2009,  
16 Gary Arden was a Manager for Smarte Carte, the company that runs the automated cart rentals at  
17 the airport, and Frank Kastell was a detective with the Airport San Mateo County Sheriff's  
18 Office. Kastell investigated Arden for embezzlement from Smarte Carte. Arden alleges Kastell  
19 fabricated evidence that he recorded in a police report and delivered to the San Mateo County  
20 District Attorney, and as a result, in April 2009, Arden was prosecuted for embezzlement. Arden  
21 was not convicted, but he was prosecuted until November 2009, when the case was dismissed by  
22 the District Attorney's Office. Arden alleges Kastell violated his civil rights by fabricating  
23 evidence of Arden's guilt, and that, as a result, Arden suffered economic damages and non-  
24 economic damages in the form of humiliation, emotional suffering, and distress. Kastell denies  
25 that he fabricated evidence, contends that his report was truthful, and disputes Arden's claim for  
26 damages.

## 27 **III. Burden of Proof**

28 When a party has the burden of proof on any claim or affirmative defense by a

1 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or  
2 affirmative defense is more probably true than not true.

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

5 **IV. Evidence**

6 1. Evidence You May Consider

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

- 8 (1) the sworn testimony of any witness;  
9 (2) the exhibits which are received into evidence; and  
10 (3) any facts to which the lawyers have agreed.

11 2. Things You May Not Consider

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

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

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

22 (3) Testimony that has been excluded or stricken, or that you have been instructed to  
23 disregard, is not evidence and must not be considered. In addition sometimes testimony and  
24 exhibits are received only for a limited purpose; when I give a limiting instruction, you must  
25 follow it.

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

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1           3.     Types of Evidence

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

8           4.     Evidence for a Limited Purpose

9           Some evidence may be admitted for a limited purpose only.

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

12          5.     The Court's Ruling on Objections

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

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

22     **V.     Witnesses**

23           1.     Evaluation of Witness Testimony

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

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

28           (1) the opportunity and ability of the witness to see or hear or know the things testified to;

- 1 (2) the witness's memory;
- 2 (3) the witness's manner while testifying;
- 3 (4) the witness's interest in the outcome of the case and any bias or prejudice;
- 4 (5) whether other evidence contradicted the witness's testimony;
- 5 (6) the reasonableness of the witness's testimony in light of all the evidence; and
- 6 (7) any other factors that bear on believability.

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

9 2. Expert Witnesses

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

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

15 **VI. Conduct of the Jury**

16 1. Prohibitions on Your Activities

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

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

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

24 Do not communicate with anyone in any way and do not let anyone else communicate  
25 with you in any way about the merits of the case or anything to do with it. This includes  
26 discussing the case in person, in writing, by phone or electronic means, via e-mail, text  
27 messaging, or any Internet chat room, blog, Web site or other feature. This applies to  
28 communicating with your fellow jurors until I give you the case for deliberation, and it

1 applies to communicating with everyone else including your family members, your  
2 employer, the media or press, and the people involved in the trial, although you may  
3 notify your family and 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 service or anything about  
5 this case, you must respond that you have been ordered not to discuss the matter and to  
6 report the contact to the court.

7 Because you will receive all the evidence and legal instruction you properly may consider  
8 to return a verdict: do not read, watch, or listen to any news or media accounts or  
9 commentary about the case or anything to do with it; do not do any research, such as  
10 consulting dictionaries, searching the Internet or using other reference materials; and do  
11 not make any investigation or in any other way try to learn about the case on your own.

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

17 2. Taking Notes

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

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

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

27 Whether or not you take notes, you should rely on your own memory of the evidence.  
28 Notes are only to assist your memory. You should not be overly influenced by your notes or

1 those of your fellow jurors.

2 3. Questions to Witnesses

3 You will be allowed to propose written questions to witnesses after the lawyers have  
4 completed their questioning of each witness. You may propose questions in order to clarify the  
5 testimony, but you are not to express any opinion about the testimony or argue with a witness. If  
6 you propose any questions, remember that your role is that of a neutral fact finder, not an  
7 advocate.

8 Before I excuse each witness, I will offer you the opportunity to write out a question on a  
9 form provided by the court. Do not sign the question. I will review the question with the  
10 attorneys to determine if it is legally proper.

11 There are some proposed questions that I will not permit, or will not ask in the wording  
12 submitted by the juror. This might happen either due to the rules of evidence or other legal  
13 reasons, or because the question is expected to be answered later in the case. If I do not ask a  
14 proposed question, or if I rephrase it, do not speculate as to the reasons. Do not give undue  
15 weight to questions you or other jurors propose. You should evaluate the answers to those  
16 questions in the same manner you evaluate all of the other evidence.

17 By giving you the opportunity to propose questions, I am not requesting or suggesting that  
18 you do so. It will often be the case that a lawyer has not asked a question because it is legally  
19 objectionable or because a later witness may be addressing that subject.

20 4. Bench Conferences and Recesses

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

27 Of course, we will do what we can to keep the number and length of these conferences to  
28 a minimum. I may not always grant an attorney's request for a conference. Do not consider my

1 granting or denying a request for a conference as any indication of my opinion of the case or of  
2 what your verdict should be.

3 **VII. Trial**

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

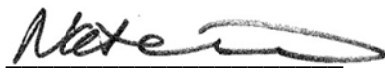
7 Gary Arden will then present evidence, and counsel for Frank Kastell may cross-examine.  
8 Then Frank Kastell may present evidence, and counsel for Gary Arden may cross-examine.

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

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

12 IT IS SO ORDERED.

13 Date: October 10, 2014

  
Nathanael M. Cousins  
United States Magistrate Judge

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