U.S. Tag Court
Model Jury Instructions

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Volume I

Instructions in Both Civil and Criminal Cases

Part I - Preliminary

1.1 - OUTSIDE SOURCES

Many of you have electronic devices such as cell phones, smartphones, tablets, and laptops. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about electronic devices. *[Judges: state your policy on phones here.]* If someone needs to contact you in case of an emergency, the judge will provide you with a phone number where you can receive messages.

[You are or are not] allowed to keep your cell phones, computers, or other electronic devices. But you cannot use them to take photographs, video recordings, or audio recordings of the proceedings in the courtroom or your fellow jurors. You must not use them to search the Internet or to find out anything related to any cases in the courthouse.

This restriction is imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. I know that, for some of you, these restrictions affect your normal daily activities and may require a change in the way you are used to communicating and perhaps even in the way you are used to learning.

If you investigate, research, or make inquiries on your own, I have no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Between now and when you have been discharged from jury duty, you must not discuss any information about your jury service with anyone, including friends and family. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including email and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

I will tell you when you are released from this instruction. Remember, these rules are designed to guarantee a fair trial. It is important that you understand the rules as well as the impact on our

system of justice if you fail to follow them. If it is determined that any one of you has violated this rule, and conducted any type of independent research or investigation, it may result in a mistrial. A mistrial would require the case to be tried again at great expense to the parties and the judicial system. The judge may also impose a penalty upon any juror who violates this instruction. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

(Based on Florida Civil Qualification Instruction).

1.2 - EXPLAINING VOIR DIRE

Before we begin to select the jury, I'll explain to you how the selection process works.

This is the part of the case where the parties and their lawyers have the opportunity to get to know a little bit about you, in order to help them come to their own conclusions about your ability to be fair and impartial, so they can decide who they think should be the jurors in this case.

How we go about that is as follows: First, I'll ask some general questions of you. Then, each of the lawyers will have more specific questions that they will ask of you. After they have asked all of their questions, I will meet with them and they will tell me their choices for jurors. Each side can ask that I exclude a person from serving on the jury if they can give me a reason to believe that he or she might be unable to be fair and impartial. That is what is called a **challenge for cause.** The lawyers also have a certain number of what are called **peremptory challenges,** by which they may exclude a person from the jury without giving a reason. By this process of elimination, the remaining persons are selected as the jury. It may take more than one conference among the parties, their attorneys, and me before the final selections are made.

The questions that you will be asked during this process are not intended to embarrass you or unnecessarily pry into your personal affairs, but it is important that the parties and their attorneys know enough about you to make this important decision. If a question is asked that you would prefer not to answer in front of the whole courtroom, just let me know and you can come up here and give your answer just in front of the attorneys and me. If you have a question of either the attorneys or me, don't hesitate to let me know.

There are no right or wrong answers to the questions that will be asked of you. The only thing that I ask is that you answer the questions as frankly and as honestly and as completely as you can. You [will take] [have taken] an oath to answer all questions truthfully and completely and you must do so. Remaining silent when you have information you should disclose is a violation of that oath as well. If a juror violates this oath, it not only may result in having to try the case all over again but also can result in civil and criminal penalties against a juror personally. So, again, it is very important that you be as honest and complete with your answers as you possibly can. If you don't understand the question, please raise your hand and ask for an explanation or clarification.

In the process of selecting the jury, some of the lawyers' questions may be meant to help them anticipate if your beliefs, experiences, or attitudes might make it difficult for you to apply the

rules of law. Jurors take an oath to follow the law. After the jury is chosen and sworn in, I will instruct the jury on the rules they must follow in deciding this case. It is important for you to remember that it will not be the jury's job to decide what the law ought to be. Rather, the jury is to determine what the facts are, then apply the law to those facts, using the court's instructions on the rules of law to apply—which will be fully given to the jury at the appropriate time.

In sum, this is a process to assist the parties and their attorneys to select a fair and impartial jury. All of the questions they ask you are for this purpose. If, for any reason, you do not think you can be a fair and impartial juror, you must tell us.

(Based on Florida Civil 201.3)

1.3 - AFTER JURY SWORN

You have now taken an oath to serve as jurors in this trial. Before we begin, I am going to tell you about the rules of law that apply to this case and let you know what you can expect as the trial proceeds.

It is my intention to give you **[all] [most] [some]** of the rules of law, but it might be that I will not know for sure all of the law that will apply in this case until all of the evidence is presented. However, I can anticipate **[some]** of the law and give it to you now so that you will better understand what to be looking for while the evidence is presented. If I later decide that different or additional law applies to the case, I will tell you.

In any event, at the end of the evidence, I will give you the final instructions on which you must base your verdict. At that time, you will have a complete written set of the instructions, so you do not have to memorize what I am about to tell you.

(Based on Florida Civil 202.1)

1.4 - EXPLAINING TRIAL PROCEDURE

Now that you have heard the law, I want to let you know what you can expect as the trial proceeds.

In a few moments, the attorneys will each have a chance to make what are called opening statements. In an opening statement, an attorney is allowed to give you their views about what the evidence will be in the trial and what you are likely to see and hear in the testimony.

After the attorneys' opening statements, the plaintiffs will bring their witnesses and evidence to you. I *(have/will)* instruct you *{in 1.6}* about evidence.

The plaintiff's lawyer will normally ask a witness the questions first. That is called **direct examination.** Then the defense lawyer may ask the same witness additional questions about whatever the witness has testified to. That is called **cross-examination.** Certain documents or other evidence may also be shown to you during direct or cross-examination. After the plaintiff's witnesses have testified, the defendant will have the opportunity to put witnesses on the stand

and go through the same process. Then the plaintiff's lawyer gets to do cross-examination. The process is designed to be fair to both sides.

After each party has concluded giving you its evidence, the attorneys will then make their closing arguments. Before doing so, I will instruct you on the law to follow so you can follow along when they argue their legal points.

Breaks in an ongoing trial are called **recesses.** During a recess, you still have your duties as a juror and must follow the rules, even if you are, for example, at home.

After you have heard the closing arguments, I will instruct you further in the law as well as explain to you the procedures you must follow to decide the case.

After you hear the final jury instructions, you will go to the jury room and discuss and decide the questions I have put on your verdict form. You will have a copy of the jury instructions to use during your discussions**.** The discussions you have and the decisions you make are usually called **jury deliberations.** Your deliberations are absolutely private, and neither I nor anyone else will be with you in the jury room.

After deliberating, you will give the verdict form to the bailiff, and we will all return to the courtroom where your verdict will be read. When that is completed, you will be released from your assignment as a juror.

(Based on part of Florida Civil 202.2)

1.5 - JURY RULES

While serving on the jury, you may not talk with anyone about anything related to the case. You may tell people that you're a juror and give them information about when you must be in court, but you must not discuss anything about the case itself with anyone.

You shouldn't even talk about the case with each other until you begin your deliberations. You want to make sure you've heard everything – all the evidence, the lawyers' closing arguments, and my instructions on the law – before you begin deliberating. You should keep an open mind until the end of the trial. Premature discussions may lead to a premature decision.

I want to emphasize that in addition to not talking face-to-face with anyone about the case, you must not communicate with anyone about the case by any other means. This includes e-mails, text messages, phone calls, and the Internet, including social-networking websites and apps such as Facebook, Instagram, Snapchat, YouTube, and Twitter. You may not use any similar technology or social media, even if I have not specifically mentioned it here.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also shouldn't Google or search online or offline for any information about the case, the parties, or the law. Don't read or listen to the news about this case, visit any places related to

this case, or research any fact, issue, or law related to this case. The law forbids jurors to talk with anyone else about the case and forbids anyone else to talk to the jurors about it. It's very important that you understand why these rules exist and why they're so important.

You must base your decision only on the testimony and other evidence presented in the courtroom. It is not fair to the parties if you base your decision in any way on information you acquire outside the courtroom. For example, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me and not from any other source.

Only you jurors can decide a verdict in this case. The law sees only you as fair, and only you have promised to be fair – no one else is so qualified.

(Based on part of 11th Circuit Civil 1.1)

1.6 - EVIDENCE

You must decide the case **only** on the evidence presented in the courtroom.

Evidence comes in **many forms**. It can be testimony about what someone saw, heard, or smelled. It can be an exhibit or a photograph. It can be someone's opinion.

Some evidence may prove a fact indirectly. Let's say a witness saw wet grass outside and people walking into the courthouse carrying wet umbrellas. This may be indirect evidence that it rained, even though the witness didn't personally see it rain. Indirect evidence like this is also called "circumstantial evidence" – simply a chain of circumstances that likely proves a fact.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Your job is to give each piece of evidence whatever weight you think it deserves.

During the trial, you'll hear certain things that are not evidence and you must not consider them.

First, the lawyers' statements and arguments aren't evidence. In their opening statements and closing arguments, the lawyers will discuss the case. Their remarks may help you follow each side's arguments and presentation of evidence. But the remarks themselves aren't evidence and shouldn't play a role in your deliberations.

Second, the lawyers' questions and objections aren't evidence. Only the witnesses' answers are evidence. Don't decide that something is true just because a lawyer's question suggests that it is. For example, a lawyer may ask a witness, "You saw Mr. Jones hit his sister, didn't you?" That question is not evidence of what the witness saw or what Mr. Jones did – unless the witness agrees with it.

There are rules of evidence that control what the court can receive into evidence. When a lawyer asks a witness a question or presents an exhibit, the opposing lawyer may object if [he/she] thinks the rules of evidence don't permit it.

If I overrule the objection, then the witness may answer the question or the court may receive the exhibit. If I sustain the objection, then the witness cannot answer the question, and the court cannot receive the exhibit. When I sustain an objection to a question, you must ignore the question and not guess what the answer might have been.

Sometimes I may disallow evidence – this is also called "striking" evidence – and order you to disregard or ignore it. That means that you must not consider that evidence when you are deciding the case.

I may allow some evidence for only a limited purpose. When I instruct you that I have admitted an item of evidence for a limited purpose, you must consider it for only that purpose and no other.

(Based on parts of 11th Circuit Civil 1.1)

1.7 - NOTES

If you wish, you may take notes to help you remember what the witnesses said. If you do take notes, please don't share them with anyone until you go to the jury room to decide the case. Don't let note-taking distract you from carefully listening to and observing the witnesses. When you leave the courtroom, you should leave your notes hidden from view in the jury room.

Whether or not you take notes, you should rely on your own memory of the testimony. Your notes are there only to help your memory. They're not entitled to greater weight than your memory or impression about the testimony.

(Based on part of 11th Circuit Civil 1.1)

1.8 - TRANSLATIONS

You may hear or see languages other than English during this trial. You must consider evidence provided through only the official court [interpreters/translators]. It is important that all jurors consider the same evidence. So even if some of you know [language], you must accept the English [interpretation/translation] provided and disregard any different meaning.
(Based on 11th Circuit Civil 1.3)

1.9 - JURY QUESTIONS

During this trial, you may submit questions to a witness after the lawyers have finished their own questioning. Here is how the procedure works: After each witness has testified, and the lawyers have asked all of their questions, I'll ask if any of you have questions. If you have a question, write it down and give it to the court staff.

You may submit a question for a witness only to clarify an answer or to help you understand the evidence. Our experience with juror questions indicates that jurors rarely have more than a few questions for any one witness, and there may be no questions at all for some witnesses.

If the rules of evidence allow your question, I will read your question to the witness. I may modify the form or phrasing of a question so that it's allowed under the evidence rules. Sometimes, I may not allow the questions to be read to the witness, either because the law does not allow it or because another witness is in a better position to answer the question. If I can't allow the witness to answer a question, you must not draw any conclusions from that fact or speculate on what the answer might have been.

The court can't re-call witnesses to the stand for additional juror questions. If you have a question for a particular witness, you must submit it when I ask.

Because you should remain neutral and open-minded throughout the trial, you should phrase your questions in a way that doesn't express an opinion about the case or a witness. You must keep an open mind until you've heard all the evidence, the closing arguments, and my final instructions on the law.

(Based on 11th Circuit Civil 1.4)

1.10 - NEWS

Reports about this trial [or about this incident] may appear in the media. The reporters may not have heard all the testimony as you have, may be getting information from people who are not under oath and subject to cross examination, may emphasize an unimportant point, or may simply be wrong.

You must not read, listen to, or watch anything about this trial. It would violate your oath as a juror to decide this case on anything other than the evidence presented at trial and on your own common sense. You must decide this case exclusively on the evidence you receive here in court.

(11th Circuit Civil 2.7)

Part 2 - Evidence

2.1 - STIPULATIONS

Sometimes the parties have agreed that certain facts are true. This agreement is called a stipulation. You must treat these facts as proved for this case.
(11th Circuit Civil 2.1)

2.2 - DEPOSITIONS

A deposition is a witness's sworn testimony that is taken before the trial. During a deposition, the witness is under oath and swears to tell the truth, and the lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of [name of witness], taken on [date], [is about to be/has been] presented to you [by a video/by reading the transcript]. Deposition testimony is entitled to the same consideration as live testimony, and you must judge it in the same way as if the witness was testifying in court.

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

(Based on 11th Circuit Civil 2.2)

2.3 - RECORDED STATEMENTS

Now you're going to hear [a] recorded conversation[s]. This is proper evidence for you to consider. Please listen to it very carefully. You are allowed to have a transcript of the recording [prepared by name of preparer] to help you identify speakers and guide you through the recording. But remember that it is the recording that is evidence – not the transcript. If you believe at any point that the transcript says something different from what you hear on the recording, disregard that portion of the transcript and rely instead on what you hear.

[In this case, there are two transcripts because there is a difference of opinion about what is said on the recording. You may disregard any portion of one or both transcripts if you believe they reflect something different from what you hear on the recording. It's what you hear on the recording that is evidence – not the transcripts.]

(Based on 11th Circuit Civil 2.3)

2.4 - JUDICIAL NOTICE

The rules of evidence allow me to accept facts that no one can reasonably dispute. The law calls this "judicial notice." I've accepted [state the fact that the court has judicially noticed] as proved even though no one introduced evidence to prove it. You must accept it as true for this case.
(11th Circuit Civil 2.5)

2.5 - INTERROGATORIES

[You'll now hear/You've heard] answers that [name of party] gave in response to written questions the other side submitted. The questions are called "interrogatories." Before the trial, [name of party] gave the answers in writing while under oath.

You must consider [name of party]'s answers as though [name of party] gave the answers on the witness stand.

(11th Circuit Civil 2.6)

2.6 - EVIDENCE TO CONSIDER

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters. In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

(11th Circuit Civil 3.3)

2.7 - CREDIBILITY OF WITNESSES

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

1. Did the witness impress you as one who was telling the truth?
2. Did the witness have any particular reason not to tell the truth?
3. Did the witness have a personal interest in the outcome of the case?
4. Did the witness seem to have a good memory?
5. Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
6. Did the witness appear to understand the questions clearly and answer them directly?
7. Did the witness's testimony differ from other testimony or other evidence?

(11th Circuit Civil 3.4)

2.8 - IMPEACHING WITNESSES

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

[*For felony convictions:* To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.]

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

(Based on 11th Circuit Civil 3.5.1, 3.5.2)

2.8 - EXPERT WITNESSES

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witness where court testimony is given with regularity and represents a significant portion of the witness's income.

(11th Circuit Civil 3.6.1, 3.6.2)

Volume II

Instructions in Civil Cases

Part 3 - General

C3.1 - DUTY TO FOLLOW INSTRUCTIONS

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone. You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

[The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the company.]

[The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.]

(11th Circuit Civil 3.2, 3.2.2, 3.2.3)

C3.2.1 - BURDEN OF PROOF FOR CLAIMS

In this case, it is the responsibility of the [Plaintiff] [party bringing any claim] to prove every essential part of [his/her/their/its] claim[s] by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that [the Plaintiff's] [the party's] claim is more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the [Plaintiff] [party making that claim or contention].

[When more than one claim is involved, you should consider each claim separately.]

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of [the Plaintiff's] [a party's] claim[s] by a preponderance of the evidence, you should find for the [Defendant] [Counter-Defendant, Cross-Claim Defendant] as to that claim.

(Based on 11th Circuit Civil 3.7.1)

C3.2.2 - BURDEN OF PROOF FOR AFFIRMATIVE DEFENSES

In this case, the [Defendant, Counter-Defendant, cross-claim Defendant] asserts the affirmative defense[s] of _____. Even if the [Plaintiff] [Party bringing the claim] proves [his/her/its] claim[s] by a preponderance of the evidence, the [Defendant, Counter-Defendant, cross-claim Defendant] can prevail in this case if [he/she/they/it] proves an affirmative defense by a preponderance of the evidence.

[When more than one affirmative defense is involved, you should consider each one separately.]

I caution you that the [Defendant, Counter-Defendant, cross-claim Defendant] does not have to disprove the [Plaintiff's] [Counter-Plaintiff's] [cross-claimant's] claim[s], but if the [Defendant, Counter-Defendant, cross-claim Defendant] raises an affirmative defense, the only way [he/she/they/it] can prevail on that specific defense is if [he/she/they/it] proves that defense by a preponderance of the evidence.
(Based on 11th Circuit Civil 3.7.2)

C3.3 - DELIBERATIONS

[Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should, or should not, prevail in this case.]

Your verdict must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

(11th Circuit Civil 3.8.1, 3.8.2)

C3.4 - ELECTING FOREPERSON

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.
[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to court staff. They will give it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so be patient as you await my response.

But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

(Based on 11th Circuit Civil 3.9)

C3.5 - *ALLEN* CHARGE

Members of the jury:

I'm going to ask you to continue your deliberations to reach a verdict. Please consider the following comments.

This is an important case. The trial has been expensive in terms of time, effort, money, and emotional strain to both the plaintiff and the defendant. If you fail to agree on a verdict, the case remains open and may have to be tried again. A second trial would be costly to both sides, and there's no reason to believe either side can try it again better or more exhaustively than they have tried it before you.

Any future jury would be selected in the same manner and from the same source as you. There's no reason to believe that the case could ever be submitted to a jury of people more conscientious, more impartial, or more competent to decide it – or that either side could produce more or clearer evidence.

It's your duty to consult with one another and to deliberate with a view to reaching an agreement – if you can do it without violating your individual judgment. You must not give up your honest beliefs about the evidence's weight or effect solely because of other jurors' opinions or just to

return a verdict. You must each decide the case for yourself – but only after you consider the evidence with your fellow jurors.

You shouldn't hesitate to reexamine your own views and change your opinion if you become convinced it's wrong. To bring your minds to a unanimous result, you must openly and frankly examine the questions submitted to you with proper regard for the opinions of others and with a willingness to reexamine your own views.

If a substantial majority of you is for a verdict for one party, each of you who holds a different position should consider whether your position is reasonable. It may not be reasonable since it makes so little impression on the minds of your fellow jurors – who bear the same responsibility, serve under the same oath, and have heard the same evidence.

You may conduct your deliberations as you choose, but I suggest that you now carefully reexamine and reconsider all the evidence in light of the court's instructions on the law. You may take all the time that you need.

I remind you that in your deliberations, you are to consider the court's instructions as a whole. You shouldn't single out any part of any instructions, including this one, and ignore others.

You may now return to the jury room and continue your deliberations.

(Based on 11th Circuit Civil 2.8)

C3.6 - INTRODUCTION TO LEGAL INSTRUCTIONS

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict.

[You will recall at the beginning of the case I told you that if, at the end of the case, I decided that different law applies, I would tell you so. These instructions are (slightly) different from what I gave you at the beginning and it is these rules of law that you must now follow.]

When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

Part 4 - State Law Tort Claims

Subpart 4.1 - General Negligence

C4.1.1 CLAIMS AND DEFENSES

The claims [and defenses] in this case are that:

(Claimant) claims that (defendant) was negligent in (describe alleged negligence) which caused [him] [her] harm.

(Defendant) denies that claim [and also claims that (claimant) was [himself] [herself] negligent in (describe the alleged comparative negligence) which caused [his] [her] harm]. [Additionally (describe any other affirmative defenses).]

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the plaintiff's case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 401.2)

C4.1.2 NEGLIGENCE

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Reasonable care on the part of a minor is the care that a reasonably careful minor of the same age, mental capacity, intelligence, training, and experience would use under like circumstances.

(Florida Civil 401.4, 401.5)

C4.1.3 *RES IPSA LOQUITUR*

If you find that ordinarily the [incident] [injury] would not have happened without negligence,

[and that the (name the item) causing the injury was in the exclusive control of (defendant) at the time it caused the injury,]

[and that the (name the item) causing the injury was in the exclusive control of (defendant) at the time the negligent act or omission, if any, must have occurred and that the (name the item), after leaving (defendant's) control, was not improperly used or handled by others or subjected to harmful forces or conditions,]*

you may infer that (defendant) was negligent unless, taking into consideration all of the evidence in the case, you find that the (describe the event) was not due to any negligence on the part of (defendant).
(Florida Civil 401.7)

C4.1.4A VIOLATION OF LAW AS NEGLIGENCE *PER SE*

Violation of this [statute] [ordinance] is negligence. If you find that (defendant or individual(s) claimed to have been negligent) violated this [statute] [ordinance], then (defendant or individual(s) claimed to have been negligent) [was] [were] negligent. You should then decide whether such negligence was a legal cause of (claimant's) [loss] [injury] [or] [damage].
(Florida Civil 401.8)

C4.1.4B VIOLATION OF LAW AS EVIDENCE OF NEGLIGENCE

Violation of this [statute] [ordinance] [regulation] is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that (defendant or individual(s) claimed to have been negligent) violated this [statute] [ordinance] [regulation], you may consider that fact, together with the other facts and circumstances, in deciding whether such person was negligent.
(Florida Civil 401.9)

C4.1.5 LEGAL CAUSE

Negligence is a legal cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the negligence, the [loss] [injury] [or] [damage] would not have occurred.

In order to be regarded as a legal cause of [loss] [injury] [or] [damage], negligence need not be the only cause. Negligence may be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the negligence contributes substantially to producing such [loss] [injury] [or] [damage].

Negligence may also be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the negligence occurs if [such other cause was itself reasonably foreseeable and the negligence contributes substantially to producing such [loss] [injury] [or] [damage]] [or] [the resulting [loss] [injury] [or] [damage] was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it].

(Based on Florida Civil 401.12)

Subpart 4.2 - Professional Negligence

C4.2.1 CLAIMS AND DEFENSES

The claims [and defenses] in this case are that:

(Claimant) claims that (defendant) was negligent in (describe alleged negligence) which caused [him] [her] harm.

(Defendant) denies that claim [and also claims that (claimant) was [himself] [herself] negligent in (describe the alleged comparative negligence) which caused [his] [her] harm]. [Additionally (describe any other affirmative defenses).]

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the plaintiff's case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 402.2)

C4.2.2 NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care on the part of a (identify professional) is the care that a reasonably careful (identify professional) would use under like circumstances. Negligence is doing something that a reasonably careful (identify professional) would not do under like circumstances or failing to do something that a reasonably careful (identify professional) would do under like circumstances.

(Florida Civil 402.5)

C4.2.3 LEGAL CAUSE

Negligence is a legal cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the negligence, the [loss] [injury] [or] [damage] would not have occurred.

In order to be regarded as a legal cause of [loss] [injury] [or] [damage], negligence need not be the only cause. Negligence may be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the negligence contributes substantially to producing such [loss] [injury] [or] [damage].

Negligence may also be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the negligence occurs if [such other cause was itself reasonably foreseeable and the negligence contributes substantially to producing such [loss] [injury] [or] [damage]] [or] [the resulting [loss] [injury] [or] [damage] was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it].

(Based on Florida Civil 402.6)

C4.2.4 LEGAL MALPRACTICE

The [next] issue(s) for you to decide on (claimant's) claim against (defendant) [is] [are] whether (defendant) was negligent in (describe alleged negligence) and, if so, if (defendant) had not been negligent, whether (claimant) would [have been successful] [have obtained a more favorable outcome] in [his] [her] [their] [its] [claim against (original adverse party)] [defense in (original proceedings)].

Plaintiff's attorney negligent: [In (claimant's) claim against (original defendant), (claimant) would have had to prove by the greater weight of the evidence that (original defendant) was negligent in (describe conduct involved in original claim) and that (original defendant's) negligence was a legal cause of the [loss] [injury] [or] [damage] to (claimant).]
[To have been successful in [his] [her] [their] [its] claim against (original defendant), (claimant) must show that any judgment would have been collectible.]

*Defendant's attorney negligent: [*In (claimant's) defense in the case of (identify original case), (claimant) would have had to prove by the greater weight of the evidence that [(original claimant) was negligent and that [his] [her] [their] [its] negligence was a contributing legal cause of the injury or damage to (original claimant)] (describe issues in other applicable defenses).]

(Based on Florida Civil 402.12)

Subpart 4.3 - False Imprisonment

C4.3.1 CLAIMS AND DEFENSES

The claims [and defenses] in this case are that:

(Claimant) claims that (defendant) intentionally restrained [him] [her], under circumstances that were unreasonable and unwarranted and without legal authority, which caused [him] [her] harm.

(Defendant) denies that claim [and also claims that (describe any affirmative defenses)].

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the plaintiff's case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 407.2)

C4.3.2 INTENTIONAL RESTRAINT

“Intentional restraint” means that [(defendant) restrained (claimant) with the purpose of causing the restraint] [(defendant) acted with knowledge that the (claimant’s) restraint would, to a substantial certainty, result from (defendant’s) acts].

To be restrained means that (claimant) was held against [his] [her] will and did not consent to the restraint. In other words, a person is restrained when [he] [she] [is not free] [does not reasonably believe [he] [she] is free], to leave the place to which [he] [she] had been confined. [To be restrained, a person must be aware of the restraint.]* However, a person is not “restrained” when there is a reasonable means of escape, which is apparent or known to the person.

A restraint is without “lawful authority” if (defendant) did not act under color of or claim of lawful authority.

[A person who makes a mistake in reporting or identifying another person to law enforcement officers is not liable for causing the other person to be restrained, if the person making the mistaken report or identification acts in good faith and does not instigate, persuade, or request the officers to restrain the other person.]

(Based on Florida Civil 407.4)

C4.3.3 LEGAL CAUSE

An unlawful and intentional restraint is a cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the unlawful and intentional restraint, the [loss] [injury] [or] [damage] would not have occurred.

In order to be regarded as a legal cause of [loss] [injury] [or] [damage] an unlawful and intentional restraint need not be the only cause. An unlawful and intentional restraint may be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the unlawful and intentional restraint contributes substantially to producing such [loss] [injury] [or] [damage].

An unlawful and intentional restraint may also be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the unlawful and intentional restraint occurs if [such other cause was itself reasonably foreseeable and the unlawful and intentional restraint contributes substantially to producing such [loss] [injury] [or] [damage]] [or] [the resulting [loss] [injury] [or] [damage] was a reasonably foreseeable consequence of the unlawful and intentional restraint and the unlawful and intentional restraint contributes substantially to producing it].

(Based on Florida Civil 407.5)

C4.3.4 ISSUES ON CLAIM

The issues for you to decide on (claimant's) claim against (defendant) are whether (defendant), without legal authority, intentionally caused (claimant) to be restrained against [his] [her] will in a manner that was unreasonable and unwarranted under the circumstances, and, if so, whether that restraint was a legal cause of [loss] [injury] [or] [damage] to (claimant).

If the preponderance of the evidence does not support (claimant's) claim, your verdict should be for (defendant). However, if the greater weight of the evidence supports (claimant's) claim, [then your verdict should be for (claimant) and against (defendant)] [then you shall consider the defense[s] raised by (defendant)].

(Florida Civil 407.6, 407.7)

Subpart 4.4 - Misrepresentation

C4.4.1 CLAIMS AND DEFENSES

The claims [and defenses] in this case are that:

(Claimant) claims that (defendant) [fraudulently] [and] [or] [negligently] misrepresented that (describe alleged misrepresentation) [and] [or] [negligently supplied false information for (describe purpose of alleged false information)] which caused [him] [her] [it] harm.

(Defendant) denies that claim [and also claims that (claimant) was [himself] [herself] [itself] negligent in (describe the alleged comparative negligence) which caused [his] [her] [its] harm]. [Additionally (describe any other affirmative defenses).]

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the plaintiff's case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 409.2)

C4.4.2 NEGLIGENCE

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Reasonable care on the part of a minor is the care that a reasonably careful minor of the same age, mental capacity, intelligence, training, and experience would use under like circumstances.

(Florida Civil 409.4)

C4.4.3A FRAUDULENT MISREPRESENTATION – THE ISSUES

The issues for you to decide on (claimant's) claim for fraudulent misrepresentation are:

1. Whether (defendant) made a false statement concerning a material fact, a fact of such importance that (claimant) would not have [entered into the transaction] [acted], but for the false statement.
2. Whether (defendant) knew the statement was false when [he] [she] [it] made it or made the statement knowing [he] [she] [it] did not know whether it was true or false;
3. Whether (defendant) intended that another would rely on the false statement;
4. Whether (claimant) relied on the false statement; and, if so,
5. Whether the reliance on the false statement was a legal cause of [loss] [injury] [or] [damage] to (claimant).

On this claim for fraudulent misrepresentation, (claimant) may rely on a false statement, even though its falsity could have been discovered if (claimant) had made an investigation. However, (claimant) may not rely on a false statement if [he] [she] [it] knew it was false or its falsity was obvious to [him] [her] [it].

(Florida Civil 409.5, 409.7)

C4.4.3B NEGLIGENT MISREPRESENTATION – THE ISSUES

The [next] issues for you to decide on (claimant's) claim for negligent misrepresentation are:

First, whether (defendant) made a statement concerning a material fact (a fact of such importance that (claimant) would not have [entered into the transaction] [acted] without it), that [he] [she] [it] believed to be true but which was in fact false;

Second, whether (defendant) was negligent in making the statement because [he] [she] [it] should have known the statement was false;

Third, whether in making the statement, (defendant) intended [or expected] that another would rely on the statement;

Fourth, whether (claimant) justifiably relied on the false statement; and, if so,

Fifth, whether the justifiable reliance on the false statement was a legal cause of [loss] [injury] [or] [damage] to (claimant).

(Based on Florida Civil 409.5, 409.8)

Subpart 4.5 - Intentional Infliction of Emotional Distress

C4.5.1 CLAIMS AND DEFENSES

The claims [and defenses] in this case are that:
(Claimant) claims that (defendant) acted extremely and outrageously in (describe alleged conduct) which caused [him] [her] severe emotional distress.

(Defendant) denies that claim [and also claims that (describe any affirmative defenses)].

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the plaintiff's case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 410.2)

C4.5.2 DEFINITIONS

Extreme and outrageous conduct is behavior, which, under the circumstances, goes beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community.

Emotional distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

(Florida Civil 410.4, 410.5)

C4.5.3 LEGAL CAUSE

Extreme and outrageous conduct is a legal cause of severe emotional distress if it directly and in natural and continuous sequence produces or contributes substantially to producing such severe emotional distress, so that it can reasonably be said that, but for the extreme and outrageous conduct, the severe emotional distress would not have occurred.

In order to be regarded as a legal cause of severe emotional distress, extreme and outrageous conduct doesn't need to be the only cause. Extreme and outrageous conduct may be a legal cause of severe emotional distress even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the extreme and outrageous conduct contributes substantially to producing such severe emotional distress.

Extreme and outrageous conduct may also be a legal cause of severe emotional distress even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the extreme and outrageous conduct occurs if [such other cause was itself reasonably foreseeable and the extreme and outrageous conduct contributes substantially to producing such severe emotional distress] [or] [the resulting severe emotional distress was a

reasonably foreseeable consequence of the extreme and outrageous conduct and the extreme and outrageous conduct contributes substantially to producing it].

(Based on Florida Civil 410.6)

C4.5.4 ELEMENTS

The issues for you to decide on (claimant's) claim are:

1. Whether (defendant) engaged in extreme and outrageous conduct.
2. Whether (defendant) acted with the intent to cause severe emotional distress or with reckless disregard of the high probability of causing severe emotional distress.
3. If you find that (defendant) engaged in extreme and outrageous conduct, whether that conduct was a legal cause of severe emotional distress to (claimant).

(Based on Florida Civil 410.7)

Subpart 4.6 - Negligent Infliction of Emotional Distress

C4.6.1 CLAIMS AND DEFENSES

The claims in this case are that:

(Claimant) claims that (defendant) was negligent in (describe alleged negligence) which inflicted emotional distress on (claimant).
(Defendant) denies that claim [and also claims that (describe any affirmative defenses)].

[The parties] [(claimant)] must prove [his] [her] [their] claims by the preponderance of the evidence. This means that on a scale, the [plaintiff's] [parties'] case needs to be heavy enough to cause the scale to tip in their favor, if only by a little.

(Based on Florida Civil 420.2)

C4.6.2 NEGLIGENCE

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.
(Based on Florida Civil 420.4)

C4.6.3 LEGAL CAUSE

Negligence is a legal cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or]

[damage], so that it can reasonably be said that, but for the conduct, the [loss] [injury] [or] [damage] would not have occurred.

In order to be regarded as a legal cause of [loss] [injury] [or] [damage], negligence need not be the only cause. Negligence may be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the negligence contributes substantially to producing such [loss] [injury] [or] [damage].

Negligence may also be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the negligence occurs if [such other cause was itself reasonably foreseeable and the negligence contributes substantially to producing such [loss] [injury] [or] [damage]] [or] [the resulting [loss] [injury] [or] [damage] was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it].

(Based on Florida Civil 420.5)

C4.6.4 ELEMENTS

The issues you must decide on (claimant's) claim against (defendant) are whether:

a. (defendant) was negligent in (describe alleged negligence), and if so, whether the negligence was a legal cause of injury to (name of injured/deceased);
b. (claimant) was involved in some way in the incident that resulted in the injury to (name of injured/deceased);
c. (claimant) had a close personal relationship to (name of injured/deceased);
d. (claimant) suffered a physical [injury] [condition] [impairment]; and
e. (claimant's) physical [injury] [condition] [impairment] resulted from the emotional distress that arose from (claimant's) involvement in the incident.

You may find (claimant) was involved in some way in the incident if (claimant) saw or heard some or all of the events making up the entire incident, including the immediate aftermath of the incident.

(Florida Civil 420.6)

C4.6.5 DEFENSE

On the defense's side, you must decide whether (identify additional person(s) or entity(ies)) [was] [were] also [negligent] [at fault] [responsible] in (describe alleged negligence, fault, or responsibility); and if so, whether that [negligence] [fault] [responsibility] was a contributing legal cause of [loss] [injury] [or] [damage] to (claimant, decedent, or person for whose injury claim is made).
If the greater weight of the evidence does not support (defendant's) defense and the greater weight of the evidence does support (claimant's) claim, then [your verdict should be for

(claimant) in the total amount of [his] [her] damages] *[you should decide and write on the verdict form what percentage of the total negligence of [both] [all] defendants you apportion to each defendant whose negligence you find was a legal cause of loss, injury, or damage to (claimant)].
**this should be used for cases with more than one defendant*
(Based on Florida Civil 420.8, 420.9)

Subpart 4.7 - Civil Theft

C4.7.1 CLAIMS AND DEFENSES

The claim in this case is that (defendant) unlawfully [obtained] [or] [used] (claimant's) property, which caused [him] [her] [it] harm. (Defendant) denies that claim.

The (claimant) must prove [his] [her] [its] claim by clear and convincing evidence. That means the evidence must persuade you that their claim or defense is highly probable or reasonably certain.

(Based on Florida Civil 411.2)

C4.7.2 LEGAL CAUSE

A party's conduct is a legal cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the conduct, the [loss] [injury] [or] [damage] would not have occurred.

In order to be regarded as a legal cause of [loss] [injury] [or] [damage], a party's conduct need not be the only cause. A party's conduct may be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] if the conduct contributes substantially to producing such [loss] [injury] [or] [damage].

A party's conduct may also be a legal cause of [loss] [injury] [or] [damage] even though it operates in combination with [the act of another] [some natural cause] [or] [some other cause] occurring after the party's conduct occurs if [such other cause was itself reasonably foreseeable and the party's conduct contributes substantially to producing such [loss] [injury] [or] [damage]] [or] [the resulting [loss] [injury] [or] [damage] was a reasonably foreseeable consequence of the party's conduct and the party's conduct contributes substantially to producing it].

(Based on Florida Civil 411.4)

C4.7.3 ELEMENTS

The issues for you to decide on (claimant's) claim are:
Whether (defendant) obtained or used [or attempted to obtain or use] the property of (claimant) with criminal intent; that is, with the intent:

[to deprive (claimant), either temporarily or permanently, of a [superior]* right to the property or a benefit from it] [or] [to appropriate, either temporarily or permanently, the property to the use of any person not entitled to it]; and, if so, whether (defendant's) actions were a legal cause of [loss] [injury] or [damage] to (claimant).

* *The word superior is to be inserted when evidence exists that the defendant took the property pursuant to a claim of right.*

Part 5 - Damages