IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
KEYBOARD()DIVISION

KEYBOARD(),	]	
	]	
Plaintiff,	]	
	]	
v.	]	**CV**
	]	
KEYBOARD(),	]	
	]	
Defendants.	]	

COURT'S INSTRUCTIONS TO THE JURY (CIVIL)

Members of the Jury:

I will now explain to you the rules of law that you must follow and apply in deciding this case.

When I have finished and the lawyers have made their closing arguments, you will go to the jury room and begin your discussions – what we call your deliberations.

A jury trial has, in effect, two judges. I am one of the judges; the other judge is the jury. My duty is to preside over the trial and to decide what evidence is proper for your consideration. My duty at the end of the trial is to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give some general instructions that apply in every case; for

example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

Duty

Your duty will be to decide whether [name of plaintiff] has proved by a preponderance of the evidence the specific facts necessary to find [name of the defendant] liable on the claims asserted. I will give you more instructions about the specific claims in a minute.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial. You, as jurors, are the judges of the facts. You must not be influenced in any way by either sympathy or prejudice, for or against either party, but in determining what actually happened – that is, in reaching your decision as to the facts – your sworn duty is to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. Your duty is to apply the law as I explain it to you, regardless of

whether you like the law or its consequences.

Your duty also is to base your verdict solely upon the evidence, without prejudice or sympathy for or against anyone. You made that promise and took that oath before being accepted by the parties as jurors, and they have the right to expect nothing less.

Remember that anything the lawyers say is not evidence in the case. Your own recollection and interpretation of the evidence controls. What the lawyers say is not binding upon you. Also, you should not assume from anything I may have said that I have any opinion concerning any of the issues in this case. Nor should you give any special attention to any questions I have asked. 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 concerning the facts.

[Corporate Party

The fact that corporations are involved as parties 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 any of the acts and statements of its employees that are made within the scope of their duties as

employees of the company.]

Evidence

In your deliberations you should consider only the evidence–that is, the testimony of the witnesses and the exhibits I have admitted in the record. As you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions that reason and common sense lead you to make. In other words, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your common experience.

You should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence, or to the reasonable inferences you draw from direct or circumstantial evidence.

Credibility

Now, in saying that you must *consider* all of the evidence, I do not mean that you must *accept* all of 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. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of this case or a related case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things about which he or she testified? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether evidence was offered tending to prove that a witness testified falsely concerning some important fact; or, whether evidence was offered that at some other time a witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

[The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in

deciding whether you believe the testimony that witness gave in this trial. Of course, the conviction is only one factor, and you must decide for yourself whether to believe that witness.]

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether it was simply an innocent lapse of memory, an innocent mistake, or an intentional falsehood; and the significance of that consideration may depend on whether the misstatement relates to an important fact or with only an unimportant detail.

When a witness is questioned about an earlier statement he or she may have made, or earlier testimony he or she may have given, such questioning is permitted to aid you in evaluating the truth or accuracy of the witness' testimony here *at this trial*.

Earlier statements made by a witness or earlier testimony given by a witness are not ordinarily offered or received as evidence of the truth or accuracy of *those* statements, but are referred to for the purpose of giving you a comparison and aiding you in making your decision as to whether you believe or disbelieve the

witness' testimony that you hear *at trial.* However, if the prior inconsistent statement of the witness was made under oath, you may also consider it as evidence, if you so choose.

Whether such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine. You can also decide whether to believe the earlier testimony given under oath, or the testimony given in this trial, or you can disregard both. You are the sole judge of the credibility of witnesses.

[Deposition Testimony

In this case, we have heard the testimony of some witnesses by deposition. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify. (Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.) You should treat deposition testimony the same as any other testimony presented in court.]

[Expert Witness

When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field is permitted to state an opinion concerning those technical matters.

Merely because such a witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, you decide whether to rely upon that testimony.]

Burden of Proof

In this case each party asserting a claim or a defense has the responsibility to prove every essential part of the claim or defense by a "preponderance of the evidence." This requirement 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 a claim or defense is more likely true than not true.

When more than one claim is involved, and when more than one defense is asserted, you should consider each claim and each defense separately; but 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 a claim or contention by a preponderance of the evidence, you should find against the party making that claim or defense.

Each count makes a separate claim against more than one of the Defendants. For each claim, the law assigns specific requirements called "elements," everyone of which the Plaintiff's must prove by a preponderance of the evidence. You must consider each element of each claim and the evidence relating to it separately. And you must consider the claims against each Defendant separately and individually.

If you find a Defendant liable for one claim, that must not affect your verdict on any other claim or for any other Defendant, except where I instruct you that the claims are specifically related. In other words, you must consider each count and each Defendant separately.

Specific Instructions

As you are aware, in this case, the plaintiff makes a claim under the Federal Civil Rights statutes that prohibit employers from discriminating against employees in the terms and conditions of their employment because of the employees' race.

More specifically, the plaintiff claims the defendant violated a federal law by terminating his employment because of his race.

The defendant denies that it discriminated against the plaintiff in any way, denies that it terminated the plaintiff's employment because of his race, and asserts that it terminated the plaintiff for legitimate business reasons that were not related to his race.

To prevail on his claim, the plaintiff must prove each of the following facts by a preponderance of the evidence:

First: That he was discharged from employment by The defendant; and

Second: That his race was a substantial or motivating factor that prompted The defendant to take that action.

[In this case, the parties agree that the defendant discharged the plaintiff; therefore, the first element has been met. So, your task is to determine whether race was a substantial or motivating factor in that decision.]

You should be mindful that the law applicable to this case requires only that an employer not discriminate against an employee because of the employee's race. So far as you are concerned in this case, an employer may discharge an employee for any other reason, good or bad, fair or unfair, and you must not second guess that decision or permit any sympathy for the employee to lead you to substitute your own

judgment for that of the Defendant even though you personally may not favor the action taken and would have acted differently under the circumstances. Neither does the law require an employer to extend any special or favorable treatment to employees because of their race.

On the other hand, the plaintiff does not need to prove that his race was the sole or exclusive reason for the defendant' decision. The proof is sufficient if the plaintiff proves that race was a motivating or determinative consideration, which means it made a difference in the defendant' decision to terminate his employment.

A plaintiff can establish that race was a motivating factor by circumstantial evidence. One way of showing that race was a determinative factor in a defendant's treatment of a plaintiff is for the plaintiff to show that other employees of a different race were treated more favorably than the plaintiff in similar circumstances. The plaintiff has identified several individuals outside his protected class who he believes are similarly situated to himself and were treated more favorably than he was. We refer to those individuals as "comparators."

To be a proper comparator, the individuals who are compared to the plaintiff must be similarly situated in all relevant respects. The quantity and quality of the comparator's misconduct must be nearly identical to the plaintiff's conduct.

You may also consider whether the defendant applied the same policies

differently to similarly situated employees for purposes of evaluating the discrimination claim. If you find a great discrepancy in the punishments received by the Caucasian employees and the plaintiff, such discrepancy can give rise to a reasonable inference that The defendant intentionally discriminated against the plaintiff because he is (state race).

Standing alone, deviation from a company policy does not demonstrate discriminatory animus. However, deviation from company policy can be circumstantial evidence of discrimination, especially where the rules were bent or broken to give a non-minority an advantage. Additionally, a plaintiff's showing that an employer's reason for not following a company policy was pretextual does not establish intentional discrimination without first finding that the employer acted because of race.

If you find in the plaintiff's favor with respect to each of the facts that he must prove, you must then decide whether the Defendant The defendant has shown by a preponderance of the evidence that it would have dismissed the plaintiff for other reasons even in the absence of consideration of his race. If you find that The defendant would have dismissed the plaintiff for reasons apart from race, then you will make that finding in your verdict.

Damages

The duty of the court is to instruct you about the measure of damages. By instructing you on damages, however, I do not mean to suggest what your verdict should be.

If you find for the plaintiff on his race discrimination claim, you must determine his damages. "Damages" means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused to him by the defendant.

The plaintiff has the burden of proving damages by a preponderance of the evidence, and you should determine what damages, if any, he has proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

If you find for the plaintiff, you must not take into account any consideration of attorneys' fees or court costs in deciding the amount of his damages. The matter of attorneys' fees and court costs will be decided later by the court.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence, and no others:

(a) Net lost wages and benefits to the date of trial;

(b) Compensatory damages, including emotional pain and mental anguish; and

(c) Punitive damages, if any, as explained in the court's instructions.

(1) Back Pay

A plaintiff in a race discrimination claim may be awarded back pay.

If you find that the plaintiff has proven his claim of discrimination by a preponderance of the evidence, you may award him as damages any lost wages and benefits he would have received from the defendant if he had not been discharged, minus the earnings and benefits that the plaintiff received from other employment during that time period. Back pay is not designed to punish the defendant; rather it is intended to restore the plaintiff to his rightful economic status absent the effects of the defendant's unlawful discrimination.

The plaintiff bears the burden to prove that he lost wages and/or benefits and the amount.

Mitigation

An award of back pay to the plaintiff is subject to every plaintiff's duty to mitigate his damages. If he fails to do so for any periods of time for which he seeks damages, then you may not award damages for that time period.

You are instructed that any person who claims damages as a result of an

alleged wrongful act on the part of another has a duty under the law to "mitigate" those damages that is, to seek out and take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage. A person mitigates his back pay by seeking employment substantially equivalent to the position he held before her discharge. The plaintiff can recover back pay only for the period that he was available and willing to accept substantially equivalent employment. You must not compensate The plaintiff for periods of time for which he was not diligently seeking work or was not available for employment.

So, if you should find from a preponderance of the evidence that The plaintiff failed to seek out or take advantage of a business or employment opportunity that was reasonably available under all the circumstances shown by the evidence, then you should reduce the amount of his damages by the amount that could have been reasonably realized if the plaintiff had taken advantage of such opportunity.

(2) Compensatory Damages

In considering the issue of the plaintiff's compensatory damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of

the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize the defendant. Also, compensatory damages must not be based on sympathy, speculation, or guesswork because only actual damages are recoverable.

On the other hand, compensatory damages are not restricted to actual loss of time or money; they cover both the mental and physical aspects of injury—tangible and intangible, which include such factors as emotional pain, humiliation, insult, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. Thus, no evidence of the value of such intangible things as emotional and mental anguish has been or need be introduced. In that respect you are not trying to determine value, but an amount that will fairly compensate the plaintiff for those claims of damage. You have no exact standard to apply; any such award should be fair and just in the light of the evidence.

I instruct you that the plaintiff does not make a claim for medical expenses, but for the emotional distress suffered regarding his claim that his insurance was terminated when his employment was terminated.

(3) Punitive Damages

The plaintiff also claims that his discharge from employment by the defendant was done with malice or reckless indifference to his federally protected

rights so as to entitle The plaintiff to an award of punitive damages in addition to compensatory damages. A defendant acts with malice if it acts with ill will or spite. A defendant acts with reckless indifference if it acts with conscious and indifferent disregard of the plaintiffs' federally protected rights. Punitive damages are meant to punish the defendant for the specific conduct that harmed the plaintiff in the case and for only that conduct. For example, you cannot assess punitive damages for a defendant being a distasteful individual or business. Punitive damages in this case could only be awarded to punish The defendant if you find malicious or reckless indifference to The plaintiff's federally protected rights only, and not for conduct that occurred at another time.

However, an employer may not be held liable for punitive damages because of discriminatory acts on the part of its managerial employees where those acts by such employees are contrary to the employer's own good faith efforts to comply with the law by implementing policies and programs designed to prevent such unlawful discrimination in the workplace.

If you find for The plaintiff, and if you further find that the the defendant did act with malice or reckless indifference to his federally protected rights, the law allows you, in your discretion, to assess punitive damages against the defendant as punishment and as a deterrent to others.

Finally, if you find that punitive damages should be assessed against The defendant, you may consider its financial resources in fixing the amount of such damages.

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.

We will now hear summations, or closing arguments, from the attorneys. Remember that what the lawyers say is not evidence. I encourage you to test what the lawyers say against your own memory of the evidence. You are the judges of the facts – not the lawyers.

Final Instruction

Ladies and Gentlemen of the Jury:

I remind you once again that the arguments of counsel are not evidence in this case. The court allows counsel to make closing arguments or summations to help you recall the evidence and to help you tie the evidence together. You should not substitute what the lawyers say about the evidence for your own recollection. Neither should you decide this case based on the eloquence of the lawyers and their arguments. You must decide the case solely based on your view of the facts as you find them to be from the evidence, and applying the law to those facts as I have instructed you.

Notes

In this case you have been permitted to take notes during the course of the trial, and most of you – perhaps all of you – have taken advantage of that opportunity and have made notes from time to time.

You will have your notes available to you during your deliberations, but you should make use of them only as an aid to your memory. In other words, you should not give your notes any precedence over your independent recollection of the evidence or the lack of evidence; and neither should you be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been.

Your duty as jurors is to discuss the case with one another and consult with one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full and impartial consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind, if you become convinced that your initial opinion was wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because the others think differently, or merely to return a verdict.

Remember, in a very real way you are judges – judges of the facts and judges of the credibility of the witnesses. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will guide your deliberations and will speak for you here in court.

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

The court has prepared a verdict form for your convenience.

(EXPLAIN – SPECIAL INTEROGS?)

You will take the verdict form to the jury room. When you have reached unanimous agreement, you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom. When you have reached your decision knock on the jury room door and tell the marshal that you have a verdict.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, regarding any message or question you might send, that you should not tell me your numerical division at the time.

From this point, you will decide when you want to take your breaks, and when you want to stop for the day. Just let the court security officer know. But you can only discuss the case when all of you are together in the jury room.

I remind you again: do not discuss this case, or anything about it, with anyone outside the jury room. Do not post anything about this case or your jury service on any blog or social networking page. Do not send email messages about the case to anyone. Do not call, text or email each other. Do not conduct any

research about any aspect of this case – that means do not consult a dictionary; do not use Google or Wikipedia; do not ask questions of anyone other than each other or me. Remember, as I told you earlier, the only information you should use to decide this case is the evidence presented and the law explained in this courtroom.

At this time, please move to the jury room. You may select your foreperson but wait until Ms. Calahan brings the exhibits to you. Then you may begin your deliberations.