ORLEANS PARISH

CIVIL DISTRICT CORT

STATE OF LOUISIANA

JUDGE JENNIFER M. MEDLEY

CASE NO.: **DIV. "F"** **SEC. 14**

PLAINTIFF

VS.

DEFENDANT

GENERAL JURY CHARGES

COVID-19 PANDEMIC RULES AND REGULATIONS

First, I would like to thank the members of the Jury for participating in this process and responding to your civil duty during this difficult time. Before I discuss the court room instructions on participating as a Juror, I would like to take a minute to discuss and embrace the concerns and questions surrounding social distancing and maintaining the health of Jurors, witnesses, attorneys, litigants, members of the audience, and this Court.

To begin, all members of the Jury are required to wear a mask, at all times, while inside the courtroom. Inside the courtroom you will find bottles of hand sanitizer placed around the courtroom. Access to and use of hand sanitizer is available to Jurors at all times. If at any time, hand sanitizer becomes unavailable, please inform the Court. For the duration of this trial, a binder with loose leaf paper will be provided to you for note taking. At the end of the day, you will return these binders to the Court. The binders will be cleaned and properly sanitized each day.

OPENING INSTRUCTIONS / STATEMENT

Members of the Jury:

As we have previously discussed, the opening statements have been made, the evidence and testimony have been presented by all parties, and the argument of counsel has been presented to you, the jury.

It is now my duty as the Judge to give you instructions, which is the law to be applied by you to the evidence presented. It is your sworn duty to apply these instructions as the law, even though you may disagree with them. The jury has been provided with a written copy of all of these instructions and charges. This copy is included in the binder provided to all members of the jury. If at any time during my instruction, you can't hear me, please raise your hand. If you need to take a break during the trial, please raise your hand.

EVIDENCE—DIRECT—INDIRECT OR CIRCUMSTANTIAL

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of eyewitnesses. The other is indirect or circumstantial evidence that is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all of the evidence in the case both direct and circumstantial.

EVIDENCE IN THE CASE -- STIPULATIONS -- JUDICIAL NOTICE INFERENCES PERMITTED

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as conclusively proved.

The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Any evidence to which an objection was made and upheld by the Court and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside of the courtroom touching the merits of the case is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as seem justified in the light of your experience and common sense.

NUMBER OF WITNESSES - CREDIBILITY

The decisive factor is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witnesses, and which evidence appeals to your minds as being most accurate and otherwise trustworthy.

The testimony of a single witness which produces in your minds a belief in the likelihood of its truth is sufficient for the proof of any fact, and would justify a verdict in accordance with that testimony, even though a number of witnesses may have testified to the contrary, if, after consideration of all of the evidence in the case, you hold greater belief in the accuracy and honesty of the one witness.

CREDIBILITY OF WITNESSES - DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. Ordinarily, it is assumed that a witness will speak the truth. But this assumption may be dispelled by the appearance and conduct of the witness, by the manner in which the witness testifies, by the character of the testimony given or by evidence to the contrary of testimony given.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. Consider each witness' intelligence, motive, state of mind, demeanor and manner while on the stand. Consider also any relationship each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimonies of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

IMPEACHMENT -- INCONSISTENT STATEMENTS OR CONDUCT

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something or has failed to say or do something which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility as you think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all of the testimony of that witness or give it such credibility as you think it deserves.

OPINION EVIDENCE – EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, you may reject the opinion entirely. Diagnosis and opinions of a personal injury plaintiff's treating physician and specialist to whom plaintiff was referred by treating physician are entitled to more weight in personal injury action than those of doctors examining plaintiff for consultation for litigation purposes only. Although testimony of a treating physician is entitled to great weight, you are not bound by it, and you do not have to follow a treating physician's testimony when the weight of the evidence points in the opposite direction.

ALL PERSONS EQUAL BEFORE THE LAW

All persons are considered equal before the law. Your consideration of the facts in this case should not be based on whether the parties involved are individuals, partnerships, corporations, unincorporated associations, governmental bodies or whatever. All parties stand equal before the law, and you must not base your deliberations on any differences as to the status of the parties.

MULTIPLE PARTIES

If there is more than one party on each side of this case, you are to decide each party's case individually. Each party plaintiff and defendant is entitled to fair consideration on the merits of his or her own individual case. Parties should not be lumped together for convenience sake. Unless otherwise stated, all instructions given you govern the case as to each party.

FOUNDATION OF PLAINTIFF'S CASE - ARTICLE 2315 NEGLIGENCE

The Louisiana law regarding negligence provides:

"Every act whatever of man that causes damage to another obligates him by whose fault it happened to repair it. Damages may include loss of consortium, service and society." (Consortium is defined as the conjugal fellowship of husband and wife, and the right of each to the company, cooperation, affection and aid of the other.)

The word fault in this law means negligence. Negligence is defined as a lack of due diligence or care. In the legal sense, negligence means the failure of a party to use due care in a particular set of circumstances. In other words, negligence is the failure of a party to use the standard of care which an ordinary, reasonable and prudent person would use under a similar set of circumstances. Basically, each of us has the duty not to injure or damage another as a result of our fault or negligence.

A person can be at fault by either an unreasonable act of commission or omission. In other words, if a person fails to perform some act which a reasonably prudent person would perform, and such failure to act causes injury of any type to another, that failure or omission is negligence. In short, negligence is the failure to exercise reasonable care towards another person to whom a duty to exercise reasonable care is owed, and negligence includes omissions as well as commissions.

BURDEN OF PROOF

The plaintiff, that is the party who claims the injury as a result of the negligence of the defendant and who seeks damages for the said injury, has the burden of proof to show, first, that he or she has been injured; second, that the defendant was negligent or at fault; and third, that the injury was the result of the said negligence or fault of the defendant. Thus, the plaintiff must prove: (1) the injuries; (2) the defendants' negligence and (3) that the defendant's negligence proximately caused the injury. All these factors are essential elements of the plaintiff's claim.

The basic law is that when one party sues another party, the suing party, also known as the plaintiff, has the duty of proving the case to the satisfaction of the jury. That proof need not be absolute proof or proof beyond a reasonable doubt, but merely proof to a preponderance of the evidence. The plaintiff proves his or her case by showing, through the evidence and testimony, that what is sought to be proved is more likely true than not true.

The defendant has no duty to prove his lack of negligence. In order to prove up the plaintiff's case, the testimony and evidence must be of such a nature and of such weight and sufficiency as to convince you, the jury, that the facts sought to be proved are more likely or more probable than not.

PROXIMATE CAUSE

To prove proximate cause, the plaintiff must show that it is more likely true than not true that the negligence or fault of the defendant, if proven, played a substantial part in bringing about or actually causing the injury claimed by the plaintiff. The proximate cause of an injury is the primary or moving act, or acts, which produces the injury complained of by the plaintiff. It is well settled in our law that unless an omission or act of commission can be shown to be a proximate cause of plaintiff's injury, it cannot be the basis for an award of damages.

This does not mean that the law recognizes only one proximate cause of an injury or damage consisting of only one factor, or the conduct of only one person. On the contrary, many factors or things, or the conduct of two or more persons may operate at the same time, either independently or together, to cause injury or damage. In such a case, each may be a proximate cause of the injury or damage.

VERDICT FOR THE DEFENDANT

If the plaintiff does not prove by a preponderance of the evidence all the essential elements of the claim, then your verdict should be for the defendant. The defendant does not have to prove his lack of fault or any essential element of the case. It is sufficient to award a verdict for the defendant if the plaintiff does not prove by a preponderance of the evidence all of the elements required by law.

DAMAGES - PAIN, MENTAL ANGUISH - PAST AND FUTURE

If you should find that the plaintiff is entitled to a verdict, you may award damages for the pain, suffering and mental anguish already suffered by the plaintiff, which proximately results from the proven injury, and you may award damages for any pain, suffering and mental anguish which you find the plaintiff is reasonably certain to suffer in the future, proximately resulting from the proven injury.

Where there is a legal right to recovery but the damages cannot be exactly estimated, the jury has reasonable discretion to assess the damages based on all of the facts and circumstances of the case.

You are not permitted to award punitive or speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably likely to occur in the future or any sum for the purpose of punishing any defendant.

AGGRAVATION OF PRE-EXISTING CONDITION

A person who causes injury to another takes his victim as he finds him. The fact that the victim has a pre-existing condition which causes him to react more severely than most people, does not lessen the responsibility of the defendant to compensate the victim for all consequences of the accident to the full extent of any aggravation of the pre-existing condition.

DAMAGES - DISABILITY TO PARTICIPATE IN SOCIAL AND RECREATIONAL ACTIVITIES

In weighing the damages which the plaintiff may have sustained as a result of this accident, you may consider as a proper item of damages any disability, in whole or in part, to perform normal physical functions such as participating in sports, social or recreational activities in which this party was formerly able to participate.

DAMAGES - MEDICAL EXPENSES - PAST & FUTURE

If you should find that the plaintiff is entitled to a verdict, in arriving at the amount of the award, you should include the reasonable value, not exceeding the actual cost to the plaintiff, of any medical expense shown by the evidence in the case to have been reasonably required and actually given in the treatment of the plaintiff or reasonably likely to be required in the future treatment of the plaintiff, as a proximate result of the injury in question. Future medical expenses are a legitimate form of recovery, even though they are not susceptible of precise mathematical calculations.

DAMAGES - LOSS OF EARNINGS AND/OR EARNING POWER - PAST AND FUTURE

If you should find that the plaintiff is entitled to a verdict, in arriving at the amount of the award you should include:

1) The value of the time, shown by the evidence to have been lost by the plaintiff since the injury, because of being unable to pursue his or her occupation. Determine the amount the plaintiff was reasonably certain to have earned during the time lost by considering his or her earning capacity, earnings and occupation.

2) The amount that will compensate the plaintiff for any loss of future earning capacity which you find that the plaintiff is reasonably certain to suffer. Determine this amount by considering plaintiff's health, ability and earning power before the accident and what they are now, the nature, extent and duration of the injury and the present value of any loss of future earning power which you find the plaintiff is reasonably certain to suffer as a result of the injury.

DAMAGES - SUBJECT TAXATION

I further instruct you that if your verdict should be in favor of the plaintiff, you will not add to the amount you may award any sum of money for income taxes. In such event, the amount you may award is exempt by law from federal income taxation.

EFFECT OF INSTRUCTIONS AS TO DAMAGES

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of the Court as to which party is entitled to a verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the plaintiff from a preponderance of the evidence in the case.

DAMAGES - NOT TO INCLUDE ATTORNEY'S FEES AND COURT COSTS

In reaching a verdict on the question of damages, I caution you not to include anything for the payment of court costs and attorney's fees; the law does not consider these as damages suffered by the plaintiffs.

VERDICT - DUTY TO DELIBERATE

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that Nine (9) jurors agree to it.

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your views, and change your opinion, if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

VERDICT - JURY'S RESPONSIBILITY

It is proper to add the caution that nothing said in these instructions and nothing in any verdict form prepared for your convenience is to suggest or convey in any way or manner any suggestion as to what verdict I think you should find. What the verdict will be is the sole and exclusive duty and responsibility of the jury.

SELECTION OF FOREPERSON - GENERAL VERDICT

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. (Verdict form read)

You will take this form to the jury room and when you have reached agreement as to your verdict, you will have the foreperson fill in, date and sign the form which sets forth the verdict upon which you agree, and then return with your verdict to the courtroom.