

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

NO. 07AS00377

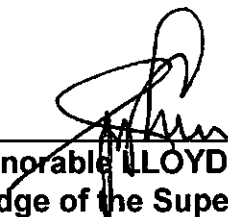
WILLIAM M. STRANGE, ET AL

VS.

ENTERCOM SACRAMENTO LLC, ET AL

**JURY INSTRUCTIONS
G I V E N**

Date: October 15, 2009



**Honorable LLOYD PHILLIPS, JR. RET.,
Judge of the Superior Court of California,
County of Sacramento**

Swain (4)

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Ladies and Gentlemen of the Jury:

It is now my duty to instruct you on the law that applies to this case. It is your duty to follow that law.

As jurors it is your duty to determine the effect and value of the evidence and to decide all questions of fact.

Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes bias for or against any party or any witness based upon his or her actual or perceived disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual orientation.

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The instructions which I am now giving you have been made available in written form for your deliberations.

1 1.00.5
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3 You must decide all questions of fact from the evidence received in this
4 trial and not from any other source. You must not make any independent
5 investigation of the facts or the law or consider or discuss facts as to which there
6 is no evidence. For example, you must not on your own visit the scene,
7 conduct experiments, or consult any other person, the internet or other sources
8 for additional information.
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1.01

If any matter is repeated or stated in different ways in my instructions, no emphasis is intended. Do not draw any inferences because of repetition.

Do not single out any individual rule or instruction and ignore others. Consider all the instructions as a whole and each in light of the others.

The order in which the instructions are given has no significance as to their relative importance.

1.02

Statements of counsel are not evidence; however, if counsel have stipulated to a fact, accept that fact as having been conclusively proved.

Do not speculate as to the answers to questions to which objections were sustained or the reasons for the objections.

Do not consider any evidence that was stricken; stricken evidence must be treated as though you had never known of it.

A suggestion in a question is not evidence unless it is adopted by the answer. A question by itself is not evidence. Consider it only to the extent it is adopted by the answer.

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1.03



The fact that corporations are parties must not prejudice you in your deliberations or in your verdict.

Do not discriminate between a corporation and natural individuals. Each is a person in the eyes of the law and entitled to the same fair and impartial consideration and to justice by the same legal standards.

1.04

There is no evidence before you that the Defendants have or do not have insurance for the Plaintiff's claim. Whether insurance exists has no bearing on this case. You must not discuss or consider it for any purpose.

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1.10

The pronoun form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a corporation as well.

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The word "Plaintiff" and "Defendant" apply to each Plaintiff and to each Defendant, respectively, except as you may otherwise be instructed.

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3 In this trial, the plaintiffs are WILLIAM STRANGE, individually, and on behalf
4 of minors RYLAND STRANGE and JORIE STRANGE, and Ronald Sims, on behalf of
5 minor KEEGAN SIMS. The Defendants are Entercom Sacramento and Entercom
6 Communications Corp.

7 Plaintiffs are seeking to recover compensatory damages against
8 Defendants Entercom Sacramento and Entercom Communications Corp. based
9 upon claims of negligence.

Ellaheh Baghaei, Peter Inzerillo, Steve Maney, Robin Pechota and Steve Weed were former employees of Entercom Sacramento and Defendants at some time during the course of this matter. You must not consider this information to determine responsibility for any harm nor speculate why they are no longer a party in this matter. You may consider this evidence only to decide whether any of these witnesses were biased or prejudiced as a result of being a party at some point in time and whether his or her testimony is believable.

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2.00

Evidence consists of testimony, writings, material objects or other things presented to the senses and offered to prove whether a fact exists or does not exist.

Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact. It is evidence which, by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.

A factual inference is a deduction that may logically and reasonably be drawn from one or more facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

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2.01

You are not required to decide any issue based solely upon the number of witnesses that have testified on the opposing sides. The testimony of one witness worthy of belief is sufficient to prove any fact. This does not mean that you are free to disregard the testimony of any witness merely from caprice or prejudice, or from a desire to favor either side. It does mean that you must not decide anything by simply counting the number of witnesses who have testified on the opposing sides. The final test is not the relative number of witnesses, but the convincing force of the evidence.

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2.02

If weaker and less satisfactory evidence is offered by a party, when it was within that party's ability to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

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2.04

In determining what inferences to draw from the evidence you may consider, among other things, a party's failure to explain or to deny that evidence.

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2.05

Certain evidence was admitted for a limited purpose.

Your attention was called to these matters when the evidence was admitted.

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2.06

Testimony has been read from transcriptions of depositions and played from video depositions. A deposition is testimony taken under oath before trial and preserved in writing. You must consider that testimony as if it had been given here in court.

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2.20

You are the sole and exclusive judges of the believability of the witnesses and the weight to be given the testimony of each witness.

In determining the believability of a witness you may consider any matter that has a tendency reasonably to prove or disprove the truthfulness of the testimony of the witness, including but not limited to the following:

The demeanor and manner of the witness while testifying;

The character and quality of that testimony;

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness testified;

The ability of the witness to remember or to communicate any matter about which the witness has testified;

The existence or nonexistence of a bias, interest, or other motive;

A statement previously made by the witness that is consistent or inconsistent with the testimony of the witness;

The existence or nonexistence of any fact testified to by the witness;

The attitude of the witness toward this action or toward the giving of testimony;

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2.21

Discrepancies in a witness' testimony or between a witness' testimony and that of other witnesses, if there were any, do not necessarily mean that any witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. You should consider whether a discrepancy pertains to an important matter or only to something trivial.

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2.40

Witnesses who have special knowledge, skill, experience, training or education in a particular subject have testified to certain opinions. This type of witness is referred to as an expert witness. In determining what weight to give any opinion expressed by an expert witness, you should consider the qualifications and believability of the witness, the facts or materials upon which each opinion is based, and the reasons for each opinion.

An opinion is only as good as the facts and reasons on which it is based. If you find that any such fact has not been proved, or has been disproved, you must consider that in determining the value of the opinion. Likewise, you must consider the strengths and weaknesses of the reasons on which it is based.

You are not bound by an opinion. Give each opinion the weight you find it deserves.

However, you may not arbitrarily or unreasonably disregard the expert opinion testimony in this case.

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3 In examining an expert witness, counsel may ask a hypothetical
4 question. This is a question in which the witness is asked to assume the truth of a
5 set of facts, and to give an opinion based on that assumption.

6 In permitting this type of question, the court does not rule, and does not
7 necessarily find that all the assumed facts have been proved. It only
8 determines that those assumed facts are within the possible range of the
9 evidence. It is for you to decide from all the evidence whether or not the facts
10 assumed in a hypothetical question have been proved. If you should decide
11 that any assumption in a question has not been proved, you are to determine
12 the effect of that failure of proof on the value and weight of the expert opinion
13 based on the assumed facts.

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3 **Witnesses who were not testifying as an expert gave an opinion during**
4 **the trial. You may, but are not required to, accept that opinion. You may give**
5 **the opinion whatever weight you think is appropriate.**

6 **Consider the extent of the witnesses' opportunity to perceive the matters**
7 **on which the opinion is based, the reasons the witnesses gave for the opinion,**
8 **and the facts or information on which the witness relied in forming that opinion.**
9 **You must decide whether information on which the witnesses relied was true**
10 **and accurate. You may disregard all or any part of an opinion that you find**
11 **unbelievable, unreasonable or unsupported by the evidence.**

1 2.60

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3 **Plaintiffs are seeking damages based upon a claim of negligence.**
4 **Plaintiffs have the burden of proving by a preponderance of the evidence all of**
5 **the facts necessary to establish:**

6 **The essential elements of the negligence claim which are set forth**
7 **elsewhere in these instructions. In addition to these essential elements, plaintiffs**
8 **have the burden of proving by a preponderance of the evidence all of the facts**
9 **necessary to establish the nature and extent of their damages claimed to have**
10 **been suffered, the elements of plaintiffs' damage and the amount thereof.**

11 **Defendants have the burden of proving by a preponderance of the**
12 **evidence all of the facts necessary to establish:**

13 **Whether the decedent, Jennifer Strange, was contributorily negligent and,**
14 **if so, the extent to which that contributory negligence contributed as a cause in**
15 **bringing about harm to Jennifer Strange. Instructions regarding contributory**
16 **negligence are set forth elsewhere in these instructions.**

17 **"Preponderance of the evidence" means evidence that has more**
18 **convincing force than that opposed to it. In other words, more true than not**
19 **true. If that evidence is so evenly balanced that you are unable to say that the**
20 **evidence on either side of an issue preponderates, your finding on that issue**
21 **must be against the party who had the burden of proving it.**

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3 **Plaintiffs seek to recover damages based upon a claim of negligence.**

4 **The essential elements of this claim are:**

5 **1. That Defendants, or either of them, were negligent;**

6 **2. The negligence of Defendants, or either of them, was a cause of**
7 **harm to Jennifer Strange, and as a result, loss or damage to plaintiffs.**

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3 Defendants contend that if they were negligent, then Jennifer Strange
4 was contributorily negligent.

5 Contributorily negligence is negligence on the part of a decedent which,
6 combining with the negligence of a defendant, contributes as a cause in
7 bringing about harm to Jennifer Strange.

8 Contributorily negligence, if any, on the part of the decedent Jennifer
9 Strange does not bar a recovery by the heirs against ^athe defendant but the total
10 amount of damages to which the heirs would otherwise be entitled must be
11 reduced in proportion to the amount of negligence attributable to the
12 decedent Jennifer Strange.
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3.10

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence.

It is the failure to use ordinary or reasonable care.

Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid harm to themselves or others under circumstances similar to those shown by the evidence.

You will note that the person whose conduct we set up as a standard is not the extraordinarily cautious individual, nor the exceptionally skillful one, but a person of reasonable and ordinary prudence.

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3.11

One test that is helpful in determining whether a person was negligent is to ask and answer the question whether or not, if a person of ordinary prudence had been in the same situation and possessed of the same knowledge, he or she would have foreseen or anticipated that someone might have been injured by or as a result of his or her action or inaction. If the answer to that question is "yes," and if the action or inaction reasonably could have been avoided, then not to avoid it would be negligence.

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You have heard evidence that certain Entercom company policies regarding contests were violated. While any such violation alone does not mean that either or both Defendants were negligent, you may consider any such violation as evidence in determining the question of negligence.

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3.12

The amount of caution required of a person in the exercise of ordinary care depends upon the conditions that are apparent or that should be apparent to a reasonably prudent person under circumstances similar to those shown by the evidence.

1 **3.13**

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3 **Every person who is exercising ordinary care has a right to assume that**
4 **every other person will perform his or her duty. In the absence of reasonable**
5 **cause for thinking otherwise, it is not negligence for a person to fail to anticipate**
6 **harm or loss which can occur only as a result of a violation of duty by another**
7 **person.**

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3.76

The law defines cause in its own particular way. A cause of damage, loss or harm is something that is a substantial factor in bringing about damage, loss or harm.

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

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

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There may be more than one cause of harm or death. When negligent conduct of two or more persons or Defendants contribute as a cause of harm or death, the conduct of each is a cause of the harm or death regardless of the extent to which each contributes to the harm. A cause is concurrent if it was operative at the moment of harm and acted with another cause to produce the harm or death.

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A corporation is responsible for harm caused by the negligent conduct of its employees while acting within the scope of their employment.

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In this case the radio station personnel involved in the "Hold Your Wee for a Wii" contest were the employees of Defendant Entercom Sacramento.

If you find that the radio station personnel involved in the "Hold Your Wee for a Wii" contest were acting in course and scope of their employment when the incident occurred, then Defendant Entercom Sacramento is responsible for any harm caused by the negligence of those personnel.

As to Defendant Entercom Communications Corp., that Defendant is responsible for any harm caused by the negligence of its employees Carmela Masi and/or John Donlevie acting in the course and scope of their employment.

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3 **Plaintiffs must prove that the radio station personnel involved in the "Hold**
4 **Your Wee for a Wii" contest were acting within the scope of their employment**
5 **when Plaintiffs were harmed.**

6 **Conduct is within the scope of employment if:**

7 **(a) It is reasonably related to the kinds of tasks that the employee was**
8 **employed to perform; or**

9 **(b) It is reasonably foreseeable in light of the employer's business or**
10 **the employee's job responsibilities.**

11 **As to Defendant Entercom Communications Corp. employees Carmela**
12 **Masi and John Donlevie, it is stipulated that they were at all times acting within**
13 **the course and scope of their employment with Defendant Entercom**
14 **Communications Corp. at all times relevant to this case.**

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John Geary is no longer a party in this matter before you. Further, both sides have stipulated that at all times relevant to this matter, John Geary was acting in course and scope of his employment with Entercom Sacramento as its Vice President and Market Manager. You are not to speculate on why he is no longer a party nor consider that fact in any fashion in your deliberations in this matter.

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Defendant Entercom Communications Corp. is the parent company of subsidiary Entercom Sacramento. The parent company is not liable for any negligence of the subsidiary company merely by reason of ownership or control.

In order to find Entercom Communications Corp. liable for negligence, you must find that it is liable as a result of its own negligent conduct, and that such negligent conduct was a cause of Jennifer Strange's harm.

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During this trial, the parties or witnesses referred to a document which has been identified in this trial as Exhibits Number 7 and Number 29. Those Exhibits are identical except one is signed and the other on is not.

This Court has held, as a matter of law, that this document does not act as a release of either Defendant of liability in this action nor act to bar the recovery of damages, by any of the plaintiffs if you find the negligence of defendants, or either of them, was a substantial factor that contributed to the death of Jennifer Strange.

However, these documents have been admitted into evidence for the following limited purposes:

1. You may consider Exhibits Number 7 and Number 29 as to the state of mind and/or conduct of Entercom Sacramento employees in determining whether they perceived the dangers, if any, of the Contest and were negligent, pursuant to these instructions.

2. You may consider Exhibits Number 7 and Number 29 as to the state of mind and/or conduct of Jennifer Strange in determining whether she perceived the dangers, if any, of the contest and was contributorily negligent, pursuant to these instructions.

You may not consider this document for any other purpose.

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If you decide that Plaintiffs WILLIAM STRANGE, RYLAND STRANGE, JORIE STRANGE, and KEEGAN SIMS have proved their claim against Defendants Entercom Sacramento and Entercom Communications Corp., or either of them, you also must decide how much money will reasonably compensate Plaintiffs for their harm. This compensation is called "damages." The amount of damages must include an award for each item of harm that was caused by the negligence of Defendants Entercom Sacramento and Entercom Communications Corp., or either of them, even if the particular harm could not have been anticipated. Plaintiffs do not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

The following are the specific items of damages claimed by Plaintiffs:

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The damages claimed by Plaintiffs WILLIAM STRANGE, RYLAND STRANGE, JORIE STRANGE, and KEEGAN SIMS fall into two categories called economic damages and noneconomic damages. You will be asked to state the two categories of damages separately on the verdict form.

WILLIAM STRANGE, RYLAND STRANGE, JORIE STRANGE, and KEEGAN SIMS claim the following economic damages:

1. The financial support, if any, that Jennifer Strange would have contributed to Plaintiffs during either the life expectancy that Jennifer Strange had before her death, or the life expectancy of Plaintiffs, whichever is shorter;
2. Funeral and burial expenses; and
3. The reasonable value of household services that Jennifer Strange would have provided.

Plaintiffs WILLIAM STRANGE, RYLAND STRANGE, JORIE STRANGE, and KEEGAN SIMS also claim the following noneconomic damages:

1. The loss of Jennifer Strange's love, companionship, comfort, care, assistance, protection, affection, society, moral support; and
2. The loss of Jennifer Strange's training and guidance.
3. Plaintiff WILLIAM STRANGE also has a claim for the loss of the enjoyment of physical intimacy.

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2 **No fixed standard exists for deciding the amount of noneconomic**
3 **damages. You must use your judgment to decide a reasonable amount based**
4 **on the evidence and your common sense.**
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6 **In determining Plaintiffs WILLIAM STRANGE's, RYLAND STRANGE's, JORIE**
7 **STRANGE's, and KEEGAN SIMS's loss, do not consider:**

- 8
- 9 **1. Plaintiffs grief, sorrow, or mental anguish;**
 - 10
 - 11 **2. Jennifer Strange's pain and suffering; or**
 - 12
 - 13 **3. The poverty or wealth of Plaintiffs WILLIAM STRANGE, RYLAND**
14 **STRANGE, JORIE STRANGE, and KEEGAN SIMS.**
 - 15

16 **In deciding a person's life expectancy, you may consider, among other**
17 **factors, the average life expectancy of a person of that age, as well as that**
18 **person's health, habits, activities, lifestyle, and occupation. According to**
19 **National Vital Statistics of the United States, the remaining life expectancy of a**
20 **28 year old female is 54.4 years, and for a 30 year old male the remaining life**
21 **expectancy is 47.3 years. These are average life expectancies. Some people**
22 **live longer and others die sooner.**

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If you decide that Plaintiffs' harms includes future economic or noneconomic damages as previously described elsewhere in these instructions, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

Present cash value is the present sum of money which, together with the investment return thereon when invested so as to yield the highest rate of return consistent with reasonable security, will pay the equivalent of lost future benefits at the times, in the amounts, and for the period that you find such future benefits would have been received.

The present cash value will, of course, be less than the amount you find to be the loss of such future benefits.

You may consider expert testimony in determining present cash value of future economic and noneconomic damages.

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14.51

If you return a verdict against either or both Defendants, it shall be in a single sum, representing the aggregate of the present cash value of all the economic and non-economic losses suffered by the heirs of the deceased.

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14.60

Do not award any party speculative damages, which mean compensation for future loss or harm which, although possible, is conjectural or not reasonably certain.

However, if you determine that a party is entitled to recover, you should compensate a party for loss or harm caused by the loss in question which is reasonably certain to be suffered in the future.

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The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

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You must not include in your award any damages to punish or make an example of Defendants Entercom Sacramento and Entercom Communications Corp. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Plaintiffs for their loss.

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15.02

Although there is more than one Defendant in this lawsuit, it does not follow from that fact alone that if one is liable both are liable. Each Defendant is entitled to a fair and separate consideration of that Defendant's defense and is not to be prejudiced by your decision as to the other. Unless otherwise stated, the instructions apply to the case of each Defendant.

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15.20

I have not intended by anything I have said or done, by any questions that I have asked, or by any rulings that I have made, to suggest how you should decide any questions of fact, or that I believe or disbelieve any witness.

If anything I have done or said has seemed so to indicate, you must disregard it and form your own opinion.

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15.22

The purpose of the court's instructions is to instruct you as to the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions apply will depend upon what you find to be the facts. Even though I have instructed you on various subjects, including damages, you must not treat the instructions as indicating the court's opinion on how you should decide any issue in this case, or as to which party is entitled to your verdict.

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15.30

In the jury room it is your duty to discuss the case in order to reach an agreement if you can.

Each of you must decide the case for yourself, but each should do so only after considering the views of each juror.

You should not hesitate to change an opinion if you are convinced it is wrong. However, you should not be influenced to decide any question in a particular way simply because a majority of jurors, or any of them, favor that decision.

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15.31

The attitude and conduct of jurors at the beginning of their deliberations are very important. It is rarely helpful for a juror, on entering the jury room, to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and one may hesitate to change a position even if shown that it is wrong. Remember that you are not partisans or advocates in this matter. You must be impartial judges of the facts.

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15.33

You must not determine any issue in this case by chance such as the flip of a coin, the drawing of lots or by any other chance determination. For example, if you determine that a party is entitled to recover, you must not arrive at the amount of damages to be awarded or any percentage of negligence by agreeing in advance to determine the average and to make that your verdict, without further exercise of your independent consideration, judgment and decision.

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You shall now retire and select one of your number to act as foreperson. Your foreperson shall preside over your deliberations. All jurors should participate in all deliberations and vote on each issue. Answer the questions according to the directions on the form and all of the instructions of the court. If nine or more can agree on the answers, you shall return a special verdict in the form of written answers to questions on a form you will be given.

As soon as any nine or more jurors have agreed upon each answer, have the answers signed and dated by your foreperson and return with it to this room. It need not be the same nine or more jurors that agree upon each answer to the questions. You may be polled in open court. If so, each juror must be able to state truthfully that the answer does or does not express his or her vote.

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After the Special Verdict Form is filled out, each juror must sign a Declaration confirming that he or she did not use a computer, cell phone messaging, twittering or texting, personal electronic and media devices or other forms of wireless communication which in any way directly or indirectly pertained to the Jennifer Strange incident and/or litigation, the attorneys or law firms representing the parties, and that he or she did not view any media information in the form of television, radio or newspaper article which in any way pertained directly or indirectly to the Jennifer Strange incident or the instant lawsuit.

Please return these declarations with the verdict form when you return to court with your verdict.