COMMITTEE NOTE

The Committee believes that this Local Civil Rule is useful in alerting counsel to the Courts' practice concerning the custody of trial and hearing exhibits, which differs from the practices of many other courts.

Local Civil Rule 39.2. Order of Summation

After the close of evidence in civil trials, the order of summation shall be determined in the discretion of the Court.

COMMITTEE NOTE

The Committee believes that Local Civil Rule 39.2 serves a useful role in clarifying the power of the Court to determine the order of summation.

Local Civil Rule 47.1. Assessment of Jury Costs

All counsel in civil cases shall seriously discuss the possibility of settlement a reasonable time prior to trial. The Court may, in its discretion, assess the parties or counsel with the cost of one day's attendance of the jurors if a case is settled after the jury has been summoned or during trial, the amount to be paid to the Clerk of the Court. For purposes of this rule, a civil jury is considered summoned for a trial as of Noon one day prior to the designated date of the trial.

COMMITTEE NOTE

The Committee understands that the power to impose the cost of one day's attendance of jurors upon parties who have failed to reach (or notify the Court of) a settlement at least one business day before trial is exercised only infrequently and in egregious cases. The Committee agrees that the Court should have this power in order to deal with such egregious cases, and that the rule serves a useful purpose in notifying the bar that the Court has this power.

(1) *In General.* If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling.* Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) REQUESTS.

(1) *Before or at the Close of the Evidence.* At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) *After the Close of the Evidence.* After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) INSTRUCTIONS. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) OBJECTIONS.

(1) *How to Make.* A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) *When to Make.* An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) ASSIGNING ERROR; PLAIN ERROR.

(1) *Assigning Error.* A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) *Plain Error.* A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) FINDINGS AND CONCLUSIONS.

(1) *In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *For a Motion.* The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings.* A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) AMENDED OR ADDITIONAL FINDINGS. On a party's motion filed no later than 28 days after the entry of judgment, the court may

(1) This draft is subject to change until it is delivered to the jury.
(2) The captions are for guidance only and will not be read.
(3) The charge to the jury will be read with extemporaneous comments and repetitions. Hence, the following, as revised and amended during the charging conference, does not reflect verbatim the charge that will be given to the jury.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff,	**JURY CHARGE**
-against-	12 Civ. 8691 (AKH)
Defendant.	

ALVIN K. HELLERSTEIN, U.S.D.J.:

Introduction

Members of the jury, we have reached the final stage in these proceedings before you begin your deliberations. This stage is called the Court's charge, or instructions, to the jury.

Let me begin by thanking you for your patience and attentiveness during the trial. Having paid close attention to the evidence that was presented, you are now prepared to reach a verdict as to whether the Plaintiff has met her burden of proof, which I will soon explain to you in this charge.

A jury charge does three things. First, it explains the rules and procedures that generally apply to a jury trial. Second, it explains how to determine whether the Plaintiff has proved that the Defendant violated the laws that the Plaintiff claims he violated. Third, it explains the procedures by which you should conduct your deliberations.

Function of the Court

You have heard all the evidence in the case, as well as the final arguments of the lawyers. My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you. If any attorney has stated legal principles different from what I state in my instructions, you must follow my instructions. You should consider my instructions as a whole when you deliberate, rather than singling out any one instruction as stating the law. You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have about what the law may be, or ought to be, it would violate your sworn duty to base a verdict upon any view of the law other than what I give you in these instructions.

Function of Jurors

As I told you when you were selected, you, the jurors, are critical to the administration of justice. The United States Constitution and statutes provide for the right to a jury trial. This right to trial by jury is an important safeguard of individual liberties.

Your ultimate role as jurors is to pass upon and decide the fact issues in the case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve any conflicts that might exist in the testimony; and you draw whatever reasonable inferences are appropriate from the facts as you see them. I will discuss how to pass upon the credibility—or believability—of the witnesses later in this charge.

Duty to Base Verdict on Evidence

The evidence before you consists of the answers given by witnesses—the testimony they gave, as you recall it—and the exhibits that were received in evidence.

You must base your verdict solely upon the evidence developed at trial, or the lack thereof. What I have said is not evidence. What the lawyers said in their opening statements, closing arguments, objections and questions is not evidence.

You may not consider any testimony or exhibits that I directed you to disregard, or that I directed to be stricken from the record. If an answer has been stricken, you must entirely disregard it as though the words were never spoken. Similarly, if I sustained an objection to a question before the witness answered, you must disregard the question entirely. You may draw no inferences from the wording of the question, nor speculate about what the witness might have answered.

Burden of Proof

The Plaintiff alleges that Defendant violated her son rights under the United States Constitution. As the Plaintiff, must prove the facts to support the allegations by a preponderance of the evidence.

When a party is required to prove a fact by a preponderance of the evidence, it means that that the party must prove that the fact is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and of all exhibits received in evidence, regardless of who may have offered them. If you find that the credible evidence on a given issue is evenly divided between the parties—that it is equally probable that is right, as it is that the Defendant is right—then you must decide that issue against If the evidence relevant to an issue is equal, has failed to satisfy her burden of proof. However, need prove no more than a preponderance. If you find that the scales tip, however slightly, in favor of –that what claims is more likely true than not true—she will have proved that issue by a preponderance of evidence.

Some of you may have heard of proof beyond a reasonable doubt, which is the standard of proof in a criminal trial. That requirement does not apply to a civil case such as this, and you should put it out of your mind.

Summary of the Claim

The evidence you have heard in this case concerns events on the evening of September 2012, in the vicinity of the intersection of Hamilton Avenue, near its intersection with West 9th Street, Brooklyn, New York. There was an incident involving law enforcement and Mr. During that incident, Defendant used lethal force against

The Plaintiff claims that the force used against by Defendant was excessive and unreasonable, in violation of his constitutional rights.

The Defendant denies the Plaintiff's allegations. He asserts that he acted properly as an officer of the New York Police Department, that was resisting arrest, and that had probable cause to believe posed a threat of death or serious physical injury to him and his fellow officers.

Neither the Plaintiff's nor the Defendant's allegations are proofs; they are merely assertions. You the jury are to evaluate the proofs and determine if the Plaintiff's assertions as to the alleged violations of constitutional right were proved by a preponderance of the evidence.

Substantive Law

The Plaintiff alleges a claim against the Defendant under Section 1983 of Title 42 of the United States Code.

First, Section 1983 provides a remedy for individuals who have been deprived of their constitutional rights under color of state law.

Section 1983 states in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State . . . subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Thus, Section 1983 provides that persons who, under color of law, violate the constitutional rights of others shall be liable to those whom they so injure.

Plaintiff's Section 1983 Claim

The Plaintiff alleges that constitutional rights to life and liberty were violated by Defendant Quigley's use of excessive force in trying to arrest .

To prove a claim under Section 1983, the Plaintiff must prove by a preponderance of the evidence:

First, that the Defendant acted under color of state law.

Second, that the Defendant acted in a manner to deprive Mr. of his constitutional right not to have excessive force used against him.

Third, that the acts and conduct of the Defendant was the proximate cause of death.

Fourth, that in performing the alleged acts, the Defendant acted with an intent to deprive of this constitutional right or acted with reckless disregard of that right.

If—and only if—you find that the Plaintiff has proved all the elements of this claim, then you should determine whether and to what extent the Plaintiff is entitled to damages. I will later discuss the kinds of damages you could award.

I will now describe these elements for you in greater detail.

Under Color of State Law

The first element of the excessive force claim requires that the Defendant acted under color of law. This element is uncontested, the parties do not dispute that the Defendant was an officer of the New York City Police Department and was acting in the course of his duties.

Deprivation of Right: Excessive Force

The second element requires that the Plaintiff prove by a preponderance of the evidence that the Defendant acted in a manner to deprive of a constitutional right.

Plaintiff alleges that Defendant used excessive force when he shot . Defendant asserts that he shot in self-defense, to protect himself and other officers seeking to arrest and that he was acting lawfully as a police officer in trying to effectuate an arrest of Tyjuan and within his immunity as a police officer.

The police have the right and responsibility to arrest a person when they have a reasonable basis to believe that the person committed a violation of law. You have heard testimony about how police on the scene attempted to arrest during a sting operation looking to arrest people involved in prostitution. Prostitution is a crime under the New York penal law. It does not matter if the violation they suspected of committing was serious or not, whether it was a minor infraction, or a misdemeanor, or a felony. If a person violates the law, the police have the right to arrest him.

The police may use force, if force is necessary, to effectuate an arrest, or to overcome a person's resistance to being arrested. If the person to be arrested flees, the police may use force to apprehend and arrest that person. The police may use any such force as is reasonable in the circumstances to successfully arrest someone who the police officer has probable cause to believe has committed a crime. But the police may not use excessive force, that is, more force than is reasonably necessary, to effectuate an arrest, or to subdue someone who is fleeing to avoid being arrested. If a policeman uses excessive force in subduing such a person, the person's constitutional right to life and liberty and to due process of law are violated.

"Excessive force" is unreasonable force. You determine the reasonableness of the

force used based upon the facts and circumstances confronting an officer on the scene. If a policeman has probable cause to believe that the person being arrested poses a significant threat to kill or inflict serious bodily injury on that policeman or on another, the policeman may use lethal force and even kill the person he is trying to arrest. A policeman also is not required to retreat from the scene if the person arrested poses a danger to the policeman or to another, the policeman may use lethal force against that person, and has an immunity from liability if that is what happened.

The question is whether the totality of the circumstances provided "probable cause" for an officer to believe that he or others faced a significant threat of death or serious physical harm. Probable cause exists when the facts and circumstances, taken together, are of such weight and persuasiveness as to convince an officer of ordinary intelligence, judgment, and experience that that there was a fair probability that posed a significant threat of death or serious physical injury to the officer or others. The question must be answered based upon what was known and reasonably understood by the officer on the scene when the force was employed, not afterward. Probable cause is not based on hindsight; it does not require certainty, and it does not require that the officer be correct. In making your determination, you must consider that police officers are often forced to make split second decisions about the amount of force necessary when circumstances are tense, uncertain, and rapidly evolving.

Thus, it is not relevant whether the police officers who were struggling to subdue could have done so without the use of lethal force. It is not relevant if they, in some way, provoked If had probable cause to believe that he or others faced a serious threat of physical harm when he was trying to arrest then his use of lethal force is reasonable.

If the use of force was objectively reasonable, the fact that a defendant had malicious intention when applying it would not make the use of such force a violation. Similarly, the fact that a defendant had good intentions when applying objectively unreasonable force would not make the use of such force permissible.

If the Defendant used excessive force, then he exceeded the bounds of his lawful authority and violated constitutional rights. If the Defendant did not use excessive force, then he did not exceed the bounds of his lawful authority and did not violate constitutional rights.

Proximate Cause

The third element of a Section 1983 claim is that the conduct of the Defendant was the proximate cause of the injury complained of. Proximate cause means there must be a sufficient causal connection between the acts or omissions of the Defendant and the death of

An act or omission is a proximate cause if it is a substantial factor in bringing about or actually causing injury—that is, if the injury or damage was a reasonably foreseeable consequence of the defendant's acts or omissions. If an injury was a direct result or a reasonably foreseeable consequence of the Defendant's acts or omissions, it was proximately caused by such act or omission. In other words, if the Defendant's acts or omissions had such an effect in producing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause.

A proximate cause need not always be the nearest cause either in time or in space. The question is whether the acts at issue were substantially the cause of the injuries complained of. There may be more than one proximate cause of an injury or damage. Many factors, or the conduct of two or more people, may operate at the same time, either independently or together, to cause an injury.

Intentionally or Recklessly

The fourth element of a claim under Section 1983 is that the Defendant acted with an intent to commit the acts that deprived of his constitutional right not to be subjected to excessive force. In order for the Plaintiff to establish this element, she must show by a preponderance of the evidence that the Defendant intended, or recklessly committed, those actions taken under color of state law that caused to suffer the loss of this right. An act is intentional if it is done knowingly. That is, if it is done voluntarily and deliberately and not because of mistake, accident, negligence or any other innocent reason. An act is reckless if it is done with a conscious disregard of its known probable consequences.

Compensatory Damages

filed this lawsuit as Administrator of the estate of her son, . Under New York Law, claim against defendant survives his death, and can be pursued by the Administrator of his estate. Thus, is really asserting s claim, and can recover damages only to the extent that could have recovered damages.

If you find that Plaintiff has proved by a preponderance of the evidence all the elements of Tyjuan claim that the Defendant violated his constitutional rights, , as Administrator of Tyjuan estate, then is entitled to recover damages from the Defendant, that is, a sum of money from the Defendant fairly and justly compensating the estate of Tyjuan for the injury that the Defendant inflicted, the loss of his life. But Plaintiff is entitled to recover damages only if Plaintiff has proved by a preponderance of evidence that the Defendant violated constitutional rights.

Please note that the issue of liability and the issue of damages are separate issues. The first question on the verdict form address the liability of the Defendant. The second question, roman numeral II, addresses damages. If you find that the Defendant violated 1 constitutional rights and is therefore liable to Plaintiff, you check that box on the verdict sheet and you go on to decide the issue of damages, how much Plaintiff should recover from the Defendant. If you find that Plaintiff failed to prove by a preponderance of the evidence that the Defendant violated constitutional rights, you check that box on the verdict sheet, and you are finished; you do not decide the issue of damages, for there can be no damages if there is no liability.

If as Administrator of Tyjuan estate, is entitled to recover damages from the Defendant, her recovery is measured by the loss of Tyjuan life. The measure is the value lost to not to as mother.

Damages have to be proved. They should not be based on sympathy or speculation. The Plaintiff has the burden to prove damages by a preponderance of the evidence. The difficulty is that the right to life cannot be quantified, and no one can prove how much life is worth. In valuing such intangibles, you have to use common sense and proportion. If the unlawful use of lethal force caused pain and suffering, pain and suffering can be taken into consideration in awarding compensatory damages. However, even if death was instantaneous and without pain and suffering, estate still has a right to recover compensation for the loss of the right to enjoyment of life. Loss of potential earnings, wages and income also can be a factor in awarding compensation, but not in this case. The Plaintiff did not offer proof of any loss of potential earnings. In the absence of proof, you should not speculate how much earnings might have been lost. You should assume that there was no loss of income, wages or earnings.

Punitive Damages

The Plaintiff has also sought punitive damages. To be entitled to punitive damages from the Defendant, the Plaintiff must prove by a preponderance of the evidence that the Defendant's conduct, not only was wrongful, but also was outrageous in the sense of being malicious or wanton. An act is maliciously done if it is prompted by ill-will or spite toward the rights of Tyjuan An act is wanton if done with reckless or callous disregard for the rights of

The purpose of punitive damages is to punish a defendant for shocking conduct and to set an example to deter others from committing similar acts in the future. Punitive damages are to be awarded only if you believe the Defendant acted so outrageously as to make appropriate a punishment and a deterrent for the future. Any award you give should be reasonable and in proportion to the degree that you find the conduct to be shocking and the need to deter such conduct in the future. An award of punitive damages is discretionary; that is, if you find that the legal requirements for punitive damages are satisfied, then you may decide to award punitive damages, or you may decide not to award them.

Attorneys' Fees

Federal law provides for an award of attorneys' fees to a plaintiff who prevails in a civil rights action. The award of attorneys' fees is a matter to be determined by the Court. You should not take into consideration the fees that the Plaintiff may have to pay her attorneys if you award damages to Plaintiff.

Evidence Generally

I have said several times that your verdict must be based upon the evidence or lack of evidence. Let me now give you some rules about the various types of evidence and about how you evaluate the testimony of witnesses.

Direct and Circumstantial Evidence

The law recognizes two types of evidence, direct and circumstantial. You may rely upon either in reaching your decision. Evidence is direct when exhibits that are admitted into evidence show facts, or when the testimony is sworn to by witnesses who have actual knowledge of them from something they have derived from the exercise of their senses, such as something they heard, something they saw, something they smelled, something they touched, and so on.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from an established fact the existence or the nonexistence of some other fact. Circumstantial evidence is of no less value than direct evidence. As a general rule, the law makes no distinction between direct and circumstantial evidence.

Inferences

During the trial, you may have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence or non-existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists. There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The Plaintiff may ask you to draw one set of inferences, while the Defendant may ask you to draw another. It is for you, and you alone, to decide what inferences you will draw.

An inference is a deduction or conclusion that you, the jury, are permitted—but not required—to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience. Here again, however, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical reasonable inferences drawn from such evidence, you must be satisfied that the Plaintiff has proved her claim by a preponderance of the evidence.

Credibility

There have been things said in the openings and summations of counsel about whether particular witnesses should be believed. I am sure that it is clear to you by now that you are being called upon to resolve various factual issues in the face of different and irreconcilable pictures painted by the parties. You will now have to decide whether the Plaintiff has proved her case by preponderance of the evidence. An important part of this decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and the importance of each witness's testimony.

Let me first give you some general guidance on how to evaluate testimony. After that, I will discuss some additional issues raised by the witnesses who have testified in this case.

There is no magic formula for evaluating testimony. You bring to this courtroom all of the experience and background of your lives in your everyday affairs. You determine for yourself every day and in a multitude of circumstances the reliability of statements which are made to you by others. The same tests that you use in your everyday matters of importance are the tests you use in your deliberations.

Your decision whether or not to believe a witness may depend on how that witness impressed you. What was the quality of the witness's observation of the event about which the witness is testifying? Was the witness's vision clear or obstructed? What was the condition of the lighting? Did events happen very fast, at about the same time and in various places? Was the witness candid, frank and forthright, and filling in with inference what the witness did not see by observation? Did the witness seem as if he or she was hiding something,

being evasive or suspect in some way? How did the way in which the witness testified on direct examination compare with the way in which he or she testified on cross-examination? Was the witness's testimony consistent or self-contradictory? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who was trying to report his or her knowledge accurately?

In evaluating credibility, you may consider evidence of a witness's prior inconsistent statements. A prior inconsistent statement is a sworn statement made at an earlier time that is inconsistent with the witness's trial testimony. Statements made in response to interrogatories and statements made in depositions are sworn statements.

It you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much to credit the witness. You may consider (i) whether the witness purposefully made a false statement or if it was an innocent mistake; (ii) whether the inconsistency turns on an important fact or a minor detail; (iii) the quality of the witness's explanation for the inconsistency; and (iv) whether you find the witness's explanation appealing to your common sense. It is your duty, based on all the evidence and your own judgment, to decide whether the prior statements you have heard were inconsistent with the trial testimony, and if so, how much weight—if any—to give to the statement made during trial.

How much you choose to believe a witness may be influenced by the witness's bias. Does the witness have a relationship with one of the parties that may affect how he or she testified? Does the witness have an interest in the outcome of this case, some incentive, loyalty or motive that might cause him or her to shade the truth? Or does the witness have some bias, prejudice or hostility that may have caused the witness—consciously or not—to give you something other than a completely accurate account of the facts he or she testified about?

You may consider such questions when deciding what weight you will give to a witness's testimony.

The testimony of a law enforcement officer should be considered by you just as any other evidence in this case, and in evaluating the officer's credibility you should use the same guidelines which you apply to the testimony of any witness. You should not give either greater or lesser credence to the testimony of a witness merely because he or she is a law enforcement officer.

If a witness has an interest in the outcome, he or she is not necessarily incapable of giving truthful testimony. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony. But evidence that one witness is biased, prejudiced or hostile with respect to someone else requires you to view that witness's testimony with caution, to weigh the evidence with care, and subject it to careful consideration. Again, only the jury can decide how to weigh testimony.

You also should consider the witness's ability to express himself or herself. Ask yourselves whether the witness's recollection of the facts stands up in light of all the other evidence in the case.

If you find that any witness has willfully testified falsely as to any material fact, you have the right to reject the testimony of that witness in its entirety. Alternatively, even if you find that a witness has testified falsely or inaccurately about one matter, you may reject as false or inaccurate that portion of his or her testimony and accept as true any other portion of his or her testimony that recommends itself to your belief or which you may find corroborated by other evidence in the case.

In essence, what you must try to do in deciding credibility is to size a person up in

light of his or her demeanor, the explanations given, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

You may have heard evidence that witnesses have discussed the facts of the case with their lawyers before the witnesses appeared in court. There is nothing unusual or improper about a witness meeting with lawyers before testifying. However, you may consider such meetings in evaluating a witness's credibility.

It is perfectly legitimate for counsel to attack the credibility of any witness, by attempting to impeach the witness. You should neither favor nor disfavor a witness simply because a lawyer sought to impeach the witness during the examination.

Expert Witnesses

You heard testimony from individuals classified as experts: Joanne Lee and Dr. Charles Wetli. I permitted these witnesses to express their opinions about matters in issue in this case because of their special knowledge, skill, experience and training. The evidence was presented to assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider each witness's qualifications, opinions, reasons for testifying, and all other considerations that you would use in evaluating any other witness's testimony. You may give the testimony whatever weight you decide it deserves. You should not, however, substitute this testimony for you own reason, judgment and common sense, or because I permitted a witness to be classified as an expert. The determination of the facts in this case rests solely with you.

Duty to Consider Only the Evidence

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must ask yourselves as you sift through the evidence is: Has the Plaintiff proven her claim against the Defendant by a preponderance of the evidence?

It is for you to decide whether the Plaintiff has proved her case solely on the basis of the evidence and lack of evidence and subject to the law as I charge you. It must be clear to you that, once you let prejudice or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

It would be improper for you to consider any personal feelings you may have about the personal characteristics of any of the parties or their lawyers, such as race, religion, national origin, sex, or age. It would be equally improper for you to allow any feelings you might have about the nature of the claim to influence you in any way.

The parties in this case are entitled to a trial free from prejudice. Our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence. Your verdict must therefore be based exclusively upon the evidence or lack of evidence in the case.

Particular Investigative Techniques Not Required

During the trial you have heard testimony that the Defendant utilized specific investigative and policing techniques.

There is no legal requirement that law enforcement officials use any specific investigative techniques. Law enforcement techniques are not your concern. Your concern is to determine whether or not the Plaintiff has proved her case by a preponderance of the evidence.

Statements by Counsel and the Court

It is the duty of the attorneys on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the Court to make rulings of law and request conferences at the side bar out of the hearing of the jury. You should not show any prejudice against an attorney or his/her client because the attorney objected to the admissibility of evidence, asked for a conference out of the hearing of the jury, or asked the Court for a ruling on the law.

You will have observed that sometimes I sustained objections and sometimes I did not. You should not let my rulings affect your decision in any way, and you should draw no inference from my comments or rulings against any lawyer or any lawyer's client. As I have already told you, it is the duty of the attorneys to offer evidence and to press objections on behalf of their side. It is my function to cut off counsel from an improper line of argument or questioning. But you should draw no inference from that. It is irrelevant whether you like a lawyer or whether you believe I like a lawyer. The issue before you is not which attorney is more likeable or the better attorney—the issue is whether has proven her claim by a preponderance of the evidence. In addition, you should note that the attorneys themselves do not have any personal knowledge of the facts in the case; their role is that of advocates, not witnesses.

You also will have observed that from time to time I asked questions of the witnesses or sought clarification on various issues. My statements and my questions are also not evidence. You should give no greater weight to witnesses' answers to my questions then you would give to witnesses' answers to questions put to them by one of the attorneys.

You are the sole and exclusive judges of the facts, including the credibility of all

witnesses and the weight to be given to the evidence admitted. I have not meant to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be. You are expressly to understand that the Court has no opinion as to the verdict you should render in this case. You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

Jury's Recollection Governs

In determining the facts, you should rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing statements, in their objections, or in their questions is not evidence. A question put to a witness is not evidence. Only the answer, taken in the context of the question that was asked, is evidence. Nor is anything I may have said during the trial, or may say during these instructions with respect to a fact matter, to substitute for your own independent recollections.

Note-Taking and Exhibit Annotation by Jurors

If you took notes, they are to be used solely to assist you. They are to aid your recollection and not to substitute for your recollection of the evidence in the case. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror. Your notes are for yourself and not for any other juror.

If, during your deliberations, you have any doubt as to any testimony, you may request that portion of the official trial transcript be made available to you. The transcript may either be read back to you, or you may be provided a transcript to read in the jury room.

You may also ask to see any exhibits that were admitted into evidence during your deliberations.

Duty to Consult and Need for Unanimity

To report a verdict, it must be unanimous. Your function is to weigh the evidence in the case and determine unanimously whether the defendant is liable, based solely upon the evidence.

Each juror is entitled to his or her opinion; each should, however, exchange views with his or her fellow jurors. That is the very essence of jury deliberation—to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence. Each of you must decide the case for yourself, after consideration with your fellow jurors, of the evidence in the case. You should not hesitate to change an opinion if, after discussion with your fellow jurors, their view appears to be correct and yours does not. That is the very purpose of deliberations. However, if, after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you should stick to your conscientious conviction and not abandon it simply because you are outnumbered.

Your final vote must reflect your conscientious conviction as to how the issues should be decided. Your verdict, whether liable or not liable, must be unanimous.

Jury Deliberations

I will now instruct you about your deliberations and how to arrive at your verdict.

The evidence presented has raised factual issues that you must decide as the trier of the facts, and you must resolve those issues solely on the basis of the evidence you have heard or the lack of evidence and my instructions on the law. Your sworn duty is to determine issues of liability solely on the basis of the evidence or lack of evidence and my instructions on the law.

Again, I remind all of you that you must not be influenced by sympathy or by any assumption, conjecture, or inference stemming from personal feelings, the nature of the allegations or your view of the relative seriousness or lack of seriousness of the issues.

You will commence deliberating when all of the jurors are present and able to listen to each other's point of view. Again, those of you who have made notes may consult them in your deliberations. But your notes should not be used to prove a recollection, or any other point, to another juror. In addition, you should not show your notes to any other juror. The notes are your personal notes and are not to be shared with anyone else. If there is doubt as to what a witness said, and your respective recollections are not sufficiently helpful, you have the right to ask for testimony about a particular point to be read to you from the verbatim transcript. Have the foreperson send me a note, dated and with the time, describing the particular item of a particular witness's testimony you wish to hear, and we will ask the reporter to locate the subject and read the testimony to you. Please understand that it may take some time for the court reporter to find testimony in the transcript, and there may be a delay in responding to you. Also, if you do send me any notes, please make sure that you do not give any indication of your present state of thinking on any disputed issue; particularly, you must not inform me of your vote

count on any issue. The foreperson should sign any notes that you send to me.

Regarding the exhibits that have been received into evidence, we will be collecting all of them and providing them to you if you so request so that you may consider them during your deliberations.

Your verdict will and must be announced only in open court at the end of your deliberations. Your verdict must be by a unanimous vote of all of you.

As soon as you retire to begin your deliberations, your first task of business should be to select a foreperson. You may either choose someone, or, by the tradition of this Court, the juror seated in the number one chair serves as the foreperson. The choice is yours. As soon as you do so, please send me a note, signed and dated, identifying the foreperson.

Finally, when you reach a verdict, the foreperson should sign the verdict sheet and then send me a note stating that you have reached a verdict. Do not send the verdict sheet itself. Do not specify what the verdict is in the note. Instead, the foreperson should retain the verdict sheet, and hand it to us in open court when you are all called in. I remind you that your verdict must be unanimous.

Members of the jury, I will ask you to remain seated where you are briefly while I confer with the attorneys to see if there are any modifications or additional instructions that they would like me to mention or anything I may not have covered in my previous instructions.

Please do not discuss the case while seated in the jury box. I may have to give you additional instructions, and the case is not ready for deliberation until then. Please remain where you are for a few minutes. * * *

Members of the jury, you may now retire.

Verdict Form
12 Civ. 8691 (AKH)

I. Has Plaintiff proved her case by a preponderance of the evidence against Defendant /?

Yes ☐

No ☒

II. If you found that Plaintiff has proved her case by a preponderance of the evidence, how much should Plaintiff recover?

a. Compensatory damages in the amount of $_____.

III. If you have found that Plaintiff should recover damages, in addition to any compensatory damages that you have found, should Plaintiff also recover punitive damages?

Yes ☐

No ☒

a. If you have answered "Yes," what amount of punitive damages should Plaintiff recover? $_____.

_____
FOREPERSON, on behalf of the jury unanimously
Date: March _____, 2018
Time: