

JURY INSTRUCTIONS  
FOR  
DISCRIMINATION UNDER TITLE VII

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LAW PROHIBITING DISCRIMINATION

Under Title VII of the Civil Rights Act, 42 U.S.C.A. §2000e-2(a), "It shall be an unlawful employment practice for an employer-- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." The Civil Rights Act is not intended as a vehicle for judicial review of employment decisions that are not the result of discrimination. Although the Civil Rights Act requires that an employer reach employment decisions without discriminating, it does not place an affirmative duty upon an employer to accord special treatment to an employee. An employer has the right to make business decisions, including selection decisions such as those at issue in this case, for good, bad, or no reason at all, as long as they don't constitute discrimination. The law does not expose an employer to liability merely because the employer may have misjudged an employee's job performance or made a personnel decision that was unwise or ill-advised. It is not your function in this case to second-guess the wisdom of any employment action which affected [plaintiff]. Thus, even if you personally disagree with the actions that were taken or believe that they were harsh or unreasonable, if you find that discrimination was not a motivating factor for the actions, then you must return a verdict in the defendant's favor.

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## DISCRIMINATORY INTENT

Proof of discriminatory intent is critical in this case. Discrimination is intentional if it is done voluntarily, deliberately, and willfully. Discriminatory intent may be proved either by direct evidence such as statements made by a person whose intent is at issue, or by circumstantial evidence from which you can infer a person's intent. Thus, in making a determination as to whether there was intentional discrimination in this case, you may consider any statement made or act done or omitted by a person whose intent is in issue as well as all other facts and circumstances that indicate his or her state of mind. You may also infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. In order to prevail on his claim, plaintiff must show that he/she was [i.e. qualified for the position that he/she sought, that he/she was not selected for the position], and that his/her [race, color, religion, sex, or national origin] and the [race, color, religion, sex, or national origin] of the person who [i.e. got the job] was a motivating factor in the decision [i.e. not to select] plaintiff. Remember that the plaintiff must show only that [race, color, religion, sex, or national origin] was a motivating factor in the defendant's decision [i.e. not to select him/her for the position he/she applied.] He/She does not have to show that it was the only or even a major factor in the defendant's decision. If [defendant] has offered a non-discriminatory reason or reasons for its [i.e. selection of \* \* \* and its not selecting plaintiff and you believe that reason or reasons, then your verdict should be for the defendant. If, however, you do not believe that this reason or reasons were the real reason or reasons for [i.e. the failure to select plaintiff], you may find that plaintiff has proven his/her claim of intentional employment discrimination, particularly if you believe that the [defendant's representatives] did not put forth honestly the reason or reasons for their decision.

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## DAMAGES - DISCRIMINATION

I will now give you instructions about how to calculate damages. You should not consider the fact that I am giving you this instruction as suggesting any view of mine as to which party is entitled to your verdict in this case, or that I think that you should award any damages. Those decisions are entirely for you to make. I am giving you these instructions solely for your guidance, in the event that you find in favor of [plaintiff] on his/her claim against the [defendant]. The fact that I do does not in any way mean that I think you should award any damages; that is entirely for you to decide. If you find for [plaintiff] on his/her claim that the defendant discriminated against him because of his/her [race, color, religion, sex, or national origin], then you must determine whether he/she is entitled to damages in an amount that is fair compensation. You may award compensatory damages only for injuries that the [plaintiff] proved were caused by the [defendant's] allegedly wrongful conduct. The damages that you award must be fair compensation, no more and no less. You may award compensatory damages for emotional pain and suffering, inconvenience, and mental anguish if you find that they were caused by [defendant's] discrimination. No evidence of the monetary value of such intangible things as pain and suffering has been or need be introduced into evidence. There is no exact standard for fixing the compensation to be determined for these elements of damage. Any award you make should be fair in light of the evidence produced at trial. In determining the amount of damages, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit. You may not consider the amount of lost wages or other benefits, if any, claimed

by the plaintiff in this case. Likewise, you may not consider the cost to plaintiff of hiring an attorney.

Those attorneys fees and lost wages are determined by the Court, if necessary, and may not be included in your damages award.