

ORIGINAL

p. 9

FILE NO. 2016-40459

**Marilyn Burgess
District Clerk**

**JANE PORTER
STEWART**

MAY 22 2019

**Time: 3:02 pm
Harris County, Texas**

VS

**By Ami A
Deputy**

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IN THE DISTRICT COURT

334TH JUDICIAL DISTRICT

**JOSE HERRERA AND
PERFORMANCE FOOD GROUP, INC.,**

HARRIS COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No."

The term "preponderance of the evidence" means the greater weight of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

7. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.
8. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
9. Do not answer questions by drawing straws or by any method of chance.
10. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

11. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
12. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

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DEFINITIONS

“**NEGLIGENCE**” means failure to use ordinary care, that is, failing to do that which a person or company of ordinary prudence would have done under the same or similar circumstances or doing that which a person or company of ordinary prudence would not have done under the same or similar circumstances.

“**ORDINARY CARE**” for either JOSE HERRERA/PERFORMANCE FOOD GROUP means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“**PROXIMATE CAUSE**” means a cause that was a substantial factor in bringing about an occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the occurrence, or some similar occurrence, might reasonably result therefrom. There may be more than one proximate cause of an occurrence.

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QUESTION NO. 1

Did the negligence, if any, of either of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

a. Jose Herrera/ Performance Food Group, Inc.

yes

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If you answered "Yes" to Question No. 1 then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 2

What sum of money, if paid now in cash, would fairly and reasonably compensate JANE PORTER for her injuries, if any, that resulted from the occurrence in question.

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question

Answer separately in dollars and cents for damages, if any. Do not reduce the amounts, if any in your answers because of the negligence, if any of JANE PORTER. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

a. Physical pain and mental anguish sustained in the past.

Answer: \$ 350,000

b. Physical pain and mental anguish that, in reasonable probability, Jane Porter will sustain in the future.

Answer: \$ 350,000

c. Physical impairment sustained in the past.

Answer: \$ 250,000

d. Physical impairment that, in reasonable probability, Jane Porter will sustain in the future.

Answer: \$ 150,000

e. Medical care expenses that, in reasonable probability, Jane Porter will incur in the future.

Answer: \$ 460,000

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

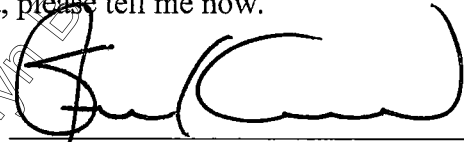
Do you understand the duties of the presiding juror? If you do not, please tell me now.

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Instructions for Signing the Verdict Certificate:

1. You may answer the questions on a vote of ten (10) jurors. The same ten (10) jurors must agree on every answer in the charge. This means you may not have one group of ten (10) jurors agree on one answer and a different group of ten (10) jurors agree on another answer.
2. If ten (10) jurors agree on every answer, those ten (10) jurors sign the verdict. If eleven (11) jurors agree on every answer, those eleven 11 jurors sign the verdict. If all twelve (12) of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve (12) of you agreeing on some answers, while only ten (10) or eleven (11) of you agree on other answers. But when you sign the verdict, only those ten (10) who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



JUDGE PRESIDING

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Verdict Certificate

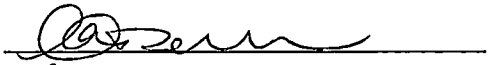

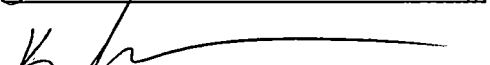
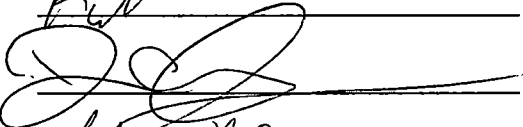


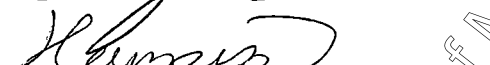
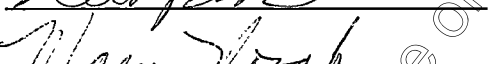
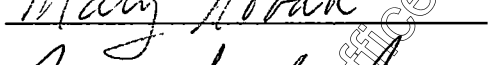
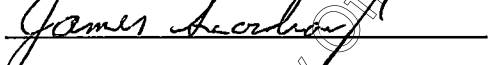
Check one:

 Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Those of us that have agreed to each and every answer and have signed the certificate below.

	Signature	Name Printed
1.		Catherine Selinger
2.		Tamara Sell
3.		Kyle Preston Peery
4.		Darion Jordan
5.		Edgar Ryan Burton
6.		Courtney Ervin
7.		Sarah Campisi
8.		Mary Novak
9.		James Scarborough
10.		Gabriel A. Franco
11.	_____	_____

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