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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KELLY BUFFINGTON,

Plaintiff,

CASE NO: SACV 18-106 JVS (JDEx)

v.

NESTLE USA, INC., GERBER  
PRODUCTS COMPANY,

Defendants.

INITIAL

JURY INSTRUCTIONS

DATED: October 7, 2019

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JAMES V. SELNA  
UNITED STATES DISTRICT JUDGE

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COURT'S INSTRUCTION NO. 1

Members of the jury: You are now the jury in this case. It is my duty to instruct you on the law.

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. It is the final set of instructions that will govern your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything I may say or do that I have an opinion regarding the evidence or what your verdict should be.

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COURT’S INSTRUCTION NO. 2

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

This case involves plaintiff Kelly Buffington’s claims against defendants, Nestle USA, Inc. and Gerber Products Company.

Kelly Buffington alleges claims for sex/pregnancy discrimination, disability discrimination, discrimination by association based on her daughter’s disability, failure to prevent discrimination, retaliation, CFRA interference, and wrongful termination in violation of public policy against both Nestle USA, Inc. and Gerber Products Company. Plaintiff alleges that she was employed by both Nestle USA, Inc. and Gerber Products Company. Plaintiff alleges that she has suffered non-monetary damages.

Defendants deny all of plaintiff’s allegations. Defendant Nestle USA, Inc. denies that it ever employed Plaintiff. Both Defendants deny that they engaged in any discrimination or any other unlawful act and deny plaintiff’s allegations that her employment was improperly terminated. Defendants also deny that either one caused plaintiff damages, and contest the amount of damages plaintiff is claiming.

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COURT'S INSTRUCTION NO. 3

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means you must be persuaded by the evidence that the claim or defense is highly probable. This is a higher standard of proof than proof by a preponderance of the evidence.

You should base your decision on all of the evidence, regardless of which party presented it.

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COURT'S INSTRUCTION NO. 4

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

COURT'S INSTRUCTION NO. 5

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Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence is admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

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COURT'S INSTRUCTION NO. 6

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3 Evidence may be direct or circumstantial. Direct evidence is direct proof of  
4 a fact, such as testimony by a witness about what that witness personally saw or  
5 heard or did. Circumstantial evidence is proof of one or more facts from which  
6 you could find another fact. You should consider both kinds of evidence. The law  
7 makes no distinction between the weight to be given to either direct or  
8 circumstantial evidence. It is for you to decide how much weight to give to any  
9 evidence.

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11 By way of example, if you wake up in the morning and see that the sidewalk  
12 is wet, you may find from that fact that it rained during the night. However, other  
13 evidence, such as a turned on garden hose, may provide a different explanation  
14 for the presence of water on the sidewalk. Therefore, before you decide that a fact  
15 has been proved by circumstantial evidence, you must consider all the evidence in  
16 the light of reason, experience, and common sense.

COURT'S INSTRUCTION NO. 7

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits are received only for a limited purpose; when I give a limiting instruction, you must follow it.

1 4. Anything you may have seen or heard when the court was not in  
2 session is not evidence. You are to decide the case solely on the evidence  
3 received at the trial.  
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COURT'S INSTRUCTION NO. 8

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There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer might have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

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COURT'S INSTRUCTION NO. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;



COURT'S INSTRUCTION NO. 10

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, via text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media. This applies to communicating with your family members, your employer, the media or press, and the people involved in the

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1 trial. If you are asked or approached in any way about your jury service or  
2 anything about this case, you must respond that you have been ordered not  
3 to discuss the matter and to report the contact to the court.

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5 Do not read, watch, or listen to any news or media accounts or commentary  
6 about the case or anything to do with it; do not do any research, such as  
7 consulting dictionaries, searching the Internet, or using other reference  
8 materials; and do not make any investigation or in any other way try to learn  
9 about the case on your own. Do not visit or view any place discussed in this  
10 case, and do not use Internet programs or other devices to search for or view  
11 any place discussed during the trial. Also, do not do any research about this  
12 case, the law, or the people involved—including the parties, the witnesses  
13 or the lawyers—until you have been excused as jurors. If you happen to  
14 read or hear anything touching on this case in the media, turn away and  
15 report it to me as soon as possible.

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17 The law requires these restrictions to ensure the parties have a fair trial  
18 based on the same evidence that each party has had an opportunity to address. A  
19 juror who violates these restrictions jeopardizes the fairness of these proceedings.  
20 If any juror is exposed to any outside information, please notify the court  
21 immediately.

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COURT’S INSTRUCTION NO. 11

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During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

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COURT'S INSTRUCTION NO. 12

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If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the courtroom. No one will read your notes. They will be destroyed at the conclusion of the case.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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COURT’S INSTRUCTION NO. 13

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Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

Buffington will then present evidence in support of its complaint, and counsel for defendants may cross-examine. Then defendants may present evidence, and counsel for defendants may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

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