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**JURY INSTRUCTION NO. 1**

2022 AUG 25 PM 4:39

CHEROKEE NATION  
DISTRICT COURT  
MEMPHIS, TENNESSEE

You are instructed that the Judge will decide the claim for violation of the Whistleblower Act. You shall consider all evidence and testimony offered during the trial in your deliberation of deciding whether the Cherokee Nation constructively discharged David Comingdeer.

**General Charging and Capacity Instructions**

**JURY INSTRUCTION NO. 2**

Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you as to the law of the case.

Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

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.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

**JURY INSTRUCTION NO. 3**

The Defendant here is a government entity. All parties are equal before the law, and a government entity is entitled to the same fair and conscientious consideration by you as any other party.

**JURY INSTRUCTION NO. 4**

Under the law, a government entity is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a government entity is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

**JURY INSTRUCTION NO. 5**

An employee, agent, director, or officer is acting within the scope of authority if he or she is engaged in the performance of duties which were expressly or impliedly assigned to him or her by the government entity.

**Burden of Proof Instructions**

**JURY INSTRUCTION NO. 6**

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.

## JURY INSTRUCTION NO. 7

In reaching your verdict, you may consider only the testimony and exhibits received into evidence and any facts to which the lawyers have agreed. 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 have said 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.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.



### **JURY INSTRUCTION NO. 8**

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

### **JURY 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. Proof of a fact does not necessarily depend on the number of witnesses who testify about 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 and any bias or prejudice;
5. Whether other evidence contradicted the witness's testimony;
6. The reasonableness of the witness's testimony in light of all the evidence; and
7. Any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

**JURY INSTRUCTION NO. 10**

Article III of the Cherokee Nation Constitution provides:

The Counsel shall make no law prohibiting the free exercise of religion or abridging the freedom of speech , or the press, or the right of the People to peaceably assemble, or to petition the Nation for a redress of grievances.

## **JURY INSTRUCTION NO. 11**

### **Constructive Discharge**

An employer is considered to have discharged an employee if the employer either knew or should have known that the employee's working conditions were so intolerable that a reasonable person in the employee's situation would feel that he had no choice but to quit. You should consider whether the employer physically threatened or humiliated the employee, how often the employer did so, and whether the employer unreasonable interfered with the employee's work performance.

## **Damages**

### **JURY INSTRUCTION NO. 12**

If you have decided that plaintiff has proved his claim of Constructive Discharge against defendant, you must also decide how much money will reasonably compensate him for any harm that was caused by defendant's wrongful conduct. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by defendant's wrongful conduct, even if the particular harm could not have been anticipated.

Plaintiff does 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.

**JURY INSTRUCTION NO. 13**

The following are the specific items of economic damages for Constructive Discharge claimed by plaintiff:

Lost wages from the date of 1st disciplinary action to date;

Lost employee benefits from the date of termination to date.

**JURY INSTRUCTION NO. 14**

If you find plaintiff is entitled to relief on his claim for Constructive Discharge you shall return a verdict in favor of plaintiff for actual damages including: lost wages, benefits and other remuneration.

**JURY INSTRUCTION NO. 15**

**Unnecessary Losses (Mitigation)**

Recovery of damages is not allowed for any losses that (Plaintiff) reasonable could have avoided.



## **Deliberations**

### **JURY INSTRUCTION NO. 16**

When you begin your deliberations, you should elect one member of the jury as your Foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be by unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

## **JURY INSTRUCTION NO. 17**

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

1. 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, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

2. Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror

who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

### **JURY INSTRUCTION NO. 18**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Court Clerk, signed by your Foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

Verdict

**JURY INSTRUCTION NO. 19**

Two verdict forms have been prepared for you. After you have reached unanimous agreement on your verdicts, your Foreperson will fill in the forms that have been given to you, sign and date them, and advise the court that you are ready to return to the courtroom. The Court will then instruct you as to any further proceedings.