

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>JOHN H. HARKINS</b>	)	
<b>PETER STOFCHIK, JR.</b>	)	
<b>WALLIE DEL TORO</b>	)	
<b>OFELIA CUEVAS</b>	)	
<b>HOWARD CANNON</b>	)	
<b>DAVID A. WILLIAMS</b>	)	
<b>LAKESA HILL-HUNTER</b>	)	
<b>LISA HILL</b>	)	
<b>MICHAEL S. METEVIA</b>	)	
<b>DANIEL T. O'BRIEN</b>	)	<b>Case No. 99 C 123</b>
<b>LOUIS E. KELLY</b>	)	
<b>DARRIN BENTON</b>	)	
<b>SHAYN KEETON</b>	)	
<b>DENNIS ARNOLD</b>	)	<b>Magistrate Judge Morton Denlow</b>
<b>TAMMIE JABLONSKI</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>RIVERBOAT SERVICES, INC.</b>	)	
<b>SHOWBOAT MARINA CASINO</b>	)	
<b>PARTNERSHIP,</b>	)	
	)	
<b>Defendants.</b>	)	

**JURY INSTRUCTIONS**

## **INTRODUCTION TO THE FINAL CHARGE**

### **Introduction**

Members of the Jury,

Now that you have heard all of the evidence to be received in this trial and each of the arguments of counsel, it becomes my duty to give you the Court's final instructions as to the law that is applicable to this case and which will guide you in your decisions.

All of the instructions of law given to you by the Court—those given to you at the beginning of the trial, those given to you during the trial, if any, and these final instructions—must guide and govern your deliberations.

The instructions I am about to give you are in writing, and you will have them in the jury room as you discuss the case in your deliberations. Also, you each have a copy in front of you now. If you follow along, please read with me and not ahead of me.

### **Functions of the Court and Jury**

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job and yours alone. Your second duty is to apply the law the Court gives you to the facts as you find them. You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

You are not to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court, just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the plaintiffs, and the denial of these allegations by the defendants.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather yours.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. Corporations and partnerships are entitled to the same fair trial at your hands as a private individual. All persons, including corporations and partnerships, stand equal before the law and are to be dealt with as equals in a court of justice.

When a corporation or partnership is involved, of course, it may act only through natural persons, such as its agents or employees. In general, any agent or employee of a corporation or partnership may bind the corporation or partnership by his or her acts and declarations made while acting within the scope of authority delegated to him or her by the corporation or partnership, or within the scope of his or her duties as an employee of the corporation or partnership.

### **What Is the Evidence in the Case**

As stated earlier, it is your duty to determine the facts, and in so doing, you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses, sworn testimony read to you from depositions, the exhibits admitted in the record, and stipulated or admitted facts. A stipulation is a statement of fact agreed to between the parties, and you must regard stipulated facts as true.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received as evidence, regardless of who may have produced them.

During the trial, I explained to you that certain evidence was being admitted for a limited purpose only. You must consider that evidence only for the limited purpose and no other.

### **What Is Not the Evidence in the Case**

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. Attorneys have a duty to object when they believe a question is improper; you should not be influenced by any objection or my ruling on it. The lawyers’ statements and arguments to you are not evidence. The purpose of these statements is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that otherwise might escape your notice.

In the final analysis, it is your own recollection and interpretation of the evidence that controls.

What the lawyers say is not binding upon you. If your recollection differs from what an attorney has said, your memory is what counts.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded. Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

### **Common Sense and Inferences**

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of your own experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the evidence in the case.

### **Deciding What to Believe**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, by the manner in which the witness testifies, by the character of the testimony given, or by evidence to the contrary of the testimony given.

While you must consider all of the evidence in the case, you need not accept all the evidence as true or accurate. You should carefully scrutinize all of the testimony, given the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' ability to observe the matter about which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters. Also, consider any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported by or contradicted by the other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from an innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. In addition, the weight of the evidence is not necessarily determined by the number of witnesses

testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The law does not require any party to call as witnesses all persons who may have been present at the time and place involved in the case, or who may appear to have some kind of knowledge of the matters at issue in this trial. Nor does the law require any party to produce as exhibits, all papers and things mentioned in evidence in the case.

### **Impeachment**

A witness may be discredited or “impeached” by: 1) contradictory evidence, 2) a showing that he or she testified falsely concerning a matter, or 3) evidence that at some other time the witness has said or done something—or failed to say or do something—that is inconsistent with the witness’ present testimony. If you believe that a witness has been impeached, then it remains your province to give the testimony of that witness the credibility or weight, if any, it deserves.

When any witness is questioned about an earlier statement that he or she may have made, or earlier testimony that he or she may have given, such questioning is permitted to aid you in evaluating the truth or accuracy of his or her testimony at the trial. In addition, if that earlier statement was made under oath and is inconsistent with the witness’ testimony at trial, you may consider that earlier sworn statement as evidence of the truth of the earlier statement. Whether or not such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine.

### **Direct and Circumstantial Evidence**

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, such as the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

### **Burden of Proof**

The burden is on the plaintiff in a civil action such as this to prove every essential element of his or her claim by a “preponderance of the evidence.” However, as you will be instructed at the close of evidence, the defendant may, in some instances, bear the burden to prove certain facts.

A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence means to prove that the claim is more likely so than not so. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof should fail to establish any essential element of the Plaintiffs' claim by a preponderance of the evidence, then the Plaintiffs have failed to carry their burden of proof by a preponderance of the evidence, and you must return a verdict for the Defendants.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression, "if you find" or "if you decide," I mean that you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

## **NATURE OF THE CLAIMS**

This action is comprised of two separate claims: 1) the failure to pay overtime wages; and 2) retaliation against those who filed this lawsuit to collect overtime wages.

The overtime wage claim portion of this case arises under the Fair Labor Standards Act (“FLSA” or “the Act”). The FLSA provides for the payment of time-and-a-half overtime pay. Three Plaintiffs, David A. Williams, Lakesa Hill-Hunter, and Lisa Hill, claim that Defendants, Riverboat Services, Inc. (“RSI”) and Showboat Marina Casino Partnership (“Showboat”), jointly employed them and did not pay overtime wages in violation of the FLSA.

The Defendants, RSI and Showboat, deny that the Plaintiffs are entitled to overtime wages because they were exempt from overtime because they were seamen. The Plaintiffs, however, claim that they were not “employed as seamen,” and consequently the Defendant employers, RSI and Showboat, are not exempt. In addition, Showboat denies that it employed any of the Plaintiffs, and thus cannot be liable to them for payment of overtime wages.

The FLSA also prohibits an employer from discharging an employee because he or she files a complaint to collect overtime wages. Thirteen of the Plaintiffs, John H. Harkins, Peter Stofcik, Jr., Wallie Del Toro, Howard Cannon, David A. Williams, Lisa Hill, Michael S. Metevia, Daniel T. O’Brien, Louis E. Kelly, Darrin Benton, Shayn Keeton, Dennis Arnold, and Tammie Jablonski, claim that their employment was terminated because they filed this lawsuit. In addition, Ofelia Cuevas claims that she was forced to quit her job because she joined this lawsuit. All Plaintiffs allege that they suffered economic harm and other injuries as a result of the discharge. RSI denies that the Plaintiffs were terminated for filing this lawsuit, and asserts that the Plaintiffs were terminated for a number of different reasons including a reduction in force, insubordination, unwillingness to work a twelve-hour shift, violation of company policy, or voluntarily quitting.

## **ESSENTIAL ELEMENTS OF PLAINTIFFS’ CLAIMS**

### **I. Claim I - Overtime Wage Claim**

In general, an employer must pay its employees at least one and one-half times their regular hourly rate of pay for all hours over forty worked in each individual workweek, unless the employer is exempt from paying for certain reasons.

The FLSA provides:

“[N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of [forty]

hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

The FLSA also provides:

“The provisions of [the overtime requirement] shall not apply with respect to —  
...  
any employee employed as a seaman[.]”

If an employee is entitled to overtime wages under the FLSA, such employee cannot waive the right to overtime wages if overtime is required by law.

You, the jury, must answer only two questions for the overtime wage claim: a) whether the three Plaintiffs were “employed as seamen,” and b) whether Showboat was an employer of the three Plaintiffs. The Court will determine the amount of overtime wages due, if any, depending upon your answers to these questions.

**a. Were the Plaintiffs employed as seamen?**

The Defendants, Showboat and RSI, claim that the FLSA overtime wage law does not apply to the three Plaintiffs because the Defendants are exempt from these requirements. The exemption claimed is that the Plaintiffs were “employed as seamen” under the FLSA, and thus are not covered by its overtime wage protections. Plaintiffs, on the other hand, contend that they were not “employed as seamen.”

The Defendants have the burden of proving, within the definition below, that the three Plaintiffs were in fact “employed as seamen” to bar recovery for overtime wages. Exemptions are to be narrowly construed against the employer.

**Definition:**

**“Employed as a Seaman”**

An employee will ordinarily be regarded as “employed as a seaman” if he or she performs, as master or subject to the authority of the master, services which are rendered primarily as an aid in the operation of a vessel as a means of transportation. The term “seaman” includes members of the crew such as sailors, engineers, radio operators, firemen, pursers, surgeons, cooks, and stewards, if the employee’s primary duties are to aid in vessel transportation operations. When a worker performs both seaman’s work and non-seaman’s work, he is a seaman unless his non-seaman’s work is substantial, or more than twenty percent of the time worked.



After considering these definitions, please answer Special Interrogatory Number 1 which is found at the end of these instructions and determine whether the Defendants have shown by a preponderance of the evidence that the three Plaintiffs were employed as seamen. Special Interrogatory Number 1 states as follows:

“Was Plaintiff, David A. Williams, employed as a seaman?	Yes ____ No ____
Was Plaintiff, Lakesa Hill-Hunter, employed as a seaman?	Yes ____ No ____
Was Plaintiff, Lisa Hill, employed as a seaman?	Yes ____ No ____”

**b. Were Plaintiffs also employed by Showboat?**

There is no dispute that the three Plaintiffs were employed by RSI. The three Plaintiffs contend, however, that they were also employed by Showboat. Showboat denies that the three Plaintiffs were employed by them.

The second question which you, as jurors, must decide is whether the three Plaintiffs were employed by Showboat.

The FLSA contains the following Definitions:

<u>Employer:</u>	An employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
<u>Person:</u>	A person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.
<u>Employ:</u>	The term employ includes to suffer or permit to work.

Under the FLSA, it is not always clear whether a person is an “employee” or not, or who the “employer” is. Some people are clearly “employees,” but a question may arise as to who the employer is; and, in some instances, an employee may have joint employers, that is, more than one employer at the same time. You should resolve this question in light of the economic realities of the entire relationship between the parties, and should consider each of the following factors to the extent you find a particular factor applicable to this case:

(1) the nature and degree of control of the employee, and who exercises that control;

- (2) the degree of supervision, direct or indirect, of the employee's work, and who exercises that supervision;
- (3) who exercises the power to determine the employee's pay rate or method of payment;
- (4) who has the right, directly or indirectly, to hire, fire, or modify the employment conditions of the employee;
- (5) who is responsible for the preparation of the payroll and the payment of wages;
- (6) who made the investment in equipment and facilities used by the employee;
- (7) who has the opportunity for profit and loss;
- (8) the permanency and exclusivity of the employment;
- (9) the degree of skill required to do the job; and
- (10) the ownership of the property or facilities where the employee works.

Consideration of all the circumstances surrounding the work relationship is essential, and no one factor is determinative. Nevertheless, the extent of the right to control the means and manner of the worker's performance is the most important factor.

After considering these factors, please answer Special Interrogatory Number 2 which is found at the end of these instructions and determine whether the three Plaintiffs have shown by a preponderance of the evidence that they were employed by Showboat. Special Interrogatory Number 2 states as follows:

"Was Showboat the employer of Plaintiff David A. Williams? Yes \_\_\_ No \_\_\_

Was Showboat the employer of Plaintiff Lakesa Hill-Hunter? Yes \_\_\_ No \_\_\_

Was Showboat the employer of Plaintiff Lisa Hill? Yes \_\_\_ No \_\_\_"

## **II. Claim 2 - Discharge under the FLSA against Defendant RSI**

The FLSA makes it unlawful for any employer to terminate the Plaintiffs' employment because they have filed a complaint to collect overtime wages.

The FLSA provides:

“[I]t shall be unlawful for any person—

[T]o discharge or in any other manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to [the FLSA]. . . .”

There are two distinct issues which you must determine in this retaliation claim: a) thirteen Plaintiffs claim that they were discharged from employment because they initiated this lawsuit, and b) Plaintiff, Ofelia Cuevas, claims that her job situation was so intolerable because she joined the lawsuit that she was forced to leave her job.

### **a. Retaliation Claim by Thirteen Plaintiffs Against RSI**

Plaintiffs, John H. Harkins, Peter Stofcik, Jr., Wallie Del Toro, Howard Cannon, David A. Williams, Lisa Hill, Michael S. Metevia, Daniel T. O'Brien, Louis E. Kelly, Darrin Benton, Shayn Keeton, Dennis Arnold, and Tammie Jablonski, claim that they were employed by Defendant RSI and that their employment was terminated because they filed this lawsuit.

### **Defense to Retaliation Claim**

You must consider any legitimate non-discriminatory reason or explanation stated by RSI. A legitimate non-discriminatory reason is any reason or explanation unrelated to the Plaintiffs' initiation of this lawsuit. The law requires that an employer not discharge or otherwise discriminate against an employee because the employee has filed a lawsuit for overtime wages. An employer may discharge or otherwise adversely affect an employee for any other reason, good or bad, fair or unfair. You must not second guess that decision or permit any sympathy for the employee to lead you to substitute your own judgment for that of the employer even though you personally may not approve of the action taken and would have acted differently under the circumstances.

RSI maintains that Plaintiffs were terminated for several reasons including, a reduction in force, insubordination, unwillingness to work a twelve-hour shift, violation of company policy, or voluntarily quitting. Finally, RSI maintains that Ofelia Cuevas voluntarily quit her job.

If you find that RSI has stated a legitimate, non-discriminatory reason for its decision, then you must

find for RSI unless the Plaintiffs prove by a preponderance of the evidence that the Defendant's stated reasons are not believable, but are only phony reasons for terminating the Plaintiffs.

The Plaintiffs have the burden to persuade you by a preponderance of the evidence that the Defendant, RSI, terminated them because they filed this lawsuit.

In order to prevail, the thirteen Plaintiffs must each show by a preponderance of the evidence all of the following:

- (1) each individual Plaintiff engaged in conduct protected by the FLSA (it is not in dispute that the Plaintiffs engaged in conduct protected by the FLSA, and you must accept this requirement as having been satisfied);
- (2) each individual Plaintiff was subjected to an adverse employment action at the time, or after the protected conduct took place (it is not in dispute that the Plaintiffs were subjected to an adverse employment action, and you must accept this requirement as also having been satisfied);
- (3) Defendant, RSI, took an adverse employment action against the individual Plaintiff because of that Plaintiff's protected conduct (this issue is in dispute and requires your consideration).

For purposes of these thirteen Plaintiffs, use Jury Verdict Form Number 1 which states as follows:

"Has Plaintiff shown by a preponderance of the evidence that he or she was fired because of this lawsuit? If you answer this question yes, you should consider the issue of damages. If you answer this question no, do not consider damages. You are to consider and answer this question separately for each Plaintiff."

You must make this determination for each individual Plaintiff claiming retaliatory discharge. Please refer to the instruction below to aid you in your determination of damages, only for those Plaintiffs for whom you have answered the question yes.

#### **b. Constructive Discharge Claim by Ofelia Cuevas**

Plaintiff, Ofelia Cuevas, contends that she was constructively discharged from employment. A constructive discharge occurs when the work environment is made so intolerable that a reasonable person of ordinary sensibilities would have quit his or her job. Unless an allegedly discriminatory work environment is so severely intolerable that it can be said the employer is intentionally seeking to drive an employee from the work place, it is not a constructive discharge. The conditions must be intolerable because of discrimination or retaliation for filing this lawsuit.

Plaintiff contends that she was forced to end her employment because the situation was intolerable because she joined this lawsuit. RSI contends that Plaintiff voluntarily resigned from her employment.

Please use Jury Verdict Form Number 2 which states:

“Has Plaintiff, Ofelia Cuevas, shown by a preponderance of the evidence that she was forced to resign her position as a fire watch because she joined this lawsuit?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, we assess damages in the amount of:

Lost wages in the following amount \$ \_\_\_\_\_

Compensatory damages in the following amount \$ \_\_\_\_\_

Punitive damages in the following amount \$ \_\_\_\_\_

Total: \_\_\_\_\_”

Use the guidelines below in your consideration of damages.

### **Damages**

If you find in favor of any individual Plaintiff for his or her discharge, you should calculate the damages according to the following guidelines. The fact that instructions are given to aid you in the determination of damages, does not mean that the Court thinks that you should – or should not – award them, that is entirely for you to decide.

#### **A. Lost Wages and Compensatory Damages**

For each claim on which you find the employer liable, the individual Plaintiff is entitled to recover an amount which will reasonably compensate him or her for the loss and damage he or she suffered as a result of the Defendant RSI’s unlawful conduct. Conduct by RSI that does not cause harm does not entitle a Plaintiff to damages. By the same token, harm to a Plaintiff which is not the result of unlawful conduct by RSI does not entitle a Plaintiff to damages.

If you find that RSI discharged or otherwise discriminated against any Plaintiff for filing this lawsuit, you may award such Plaintiff reasonable compensation for the following:

- 1) all economic losses, such as lost income or wages, and
- 2) emotional suffering, inconvenience, embarrassment, and / or humiliation.

Each Plaintiff is entitled to compensatory damages including the back pay he or she would have earned if RSI had not discharged him or her because of this lawsuit. The amount would consist of the wages each Plaintiff would have received from the date of the discharge less the amounts actually earned until the date of the trial. You may not award damages based simply on speculation or guesswork. Any award must fairly compensate each Plaintiff for his or her injury, but must have a basis in and be reasonable in light of the evidence.

### **Mitigation of Lost Wage Damages**

Each individual Plaintiff must make every reasonable effort to minimize or reduce his or her damages for loss of compensation by seeking other employment. This is called mitigation of damages.

RSI bears the burden of proving by a preponderance of the evidence that an individual Plaintiff failed to exercise reasonable diligence in seeking employment. To meet this burden, RSI must show that: (1) the Plaintiff was not reasonably diligent in seeking other employment; and (2) had the Plaintiff been reasonably diligent, there was a reasonable chance the Plaintiff might have found comparable employment. In determining what is “comparable employment,” the law does not require that the individual Plaintiff go into another line of work, accept a demotion, or take a demeaning position.

You must find that an individual Plaintiff has acted with reasonable diligence, even if he or she did not succeed in finding comparable employment, if you find that he or she made an honest, good faith effort to seek employment. If you determine that RSI has failed to prove that an individual Plaintiff did not exercise reasonable diligence, you must not reduce his or her damages.

If you determine that an individual Plaintiff did not make reasonable efforts to obtain another similar job, you must decide whether any damages resulted from his or her failure to do so. You must not compensate a Plaintiff for any portion of his or her lost wage damages that resulted from his or her failure to make reasonable efforts to reduce the damages.

### **B. Punitive Damages**

In addition to lost wage and compensatory damages, the FLSA allows, but does not require, the jury to award punitive damages against RSI if it is found liable for the retaliatory discharges. The purpose of punitive damages is to punish a wrongdoer for extraordinary misconduct and to warn others against doing the same.

If you find in favor of an individual Plaintiff and against RSI, and if you find by a preponderance of the evidence that the Plaintiff's firing was motivated by an evil motive or that RSI was callously indifferent to the Plaintiff's federally protected rights, then in addition to any damages to which you find the Plaintiff is entitled, you may, but are not required, to award that Plaintiff an additional amount as punitive damages if you find it is appropriate to punish RSI or to deter RSI and others from like conduct in the future. Whether to award a Plaintiff punitive damages, and the amount of those damages are within your discretion. In determining this amount, consider the following:

- 1) the offensiveness of the conduct;
- 2) the amount needed to prevent RSI's repetition of the violation of the Act; and
- 3) whether the amount of punitive damages bears a reasonable relationship to the compensatory damages awarded to the particular Plaintiff by you.

You should use calm discretion and sound reasoning to determine whether to award punitive damages and the amount of such an award. You must not be influenced by sympathy for or dislike of any party in the case.

For any type of damages which you determine should be awarded, insert the dollar amount next to that item of damages. For any type of damages which you determine should not be awarded, insert a zero next to that item of damages.

## **VERDICT - UNANIMOUS - DUTY TO DELIBERATE**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

## **EFFECT OF INSTRUCTION AS TO DAMAGES**

The fact that the Court has instructed you as to the proper measure of damages should not be considered as intimating any view of the Court as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiffs from a preponderance of the evidence in the case, in accordance with the other instructions.

## **SELECTION OF A FOREPERSON**

Upon retiring to the jury room, you will select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

## **VERDICT FORMS**

Verdict forms have been prepared for your convenience. You will take the verdict forms to the jury room, and when you have reached unanimous agreement as to your verdict, you will all sign and date the form which sets forth the verdict upon which you unanimously agree, and then return with your verdict to the courtroom.

## **VERDICT FORMS - JURY'S RESPONSIBILITY**

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict the Court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.



## **COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiff that [s]he too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind that you are never to reveal to any person – not even to the Court – how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

**Special Interrogatory Number 1**

Was Plaintiff, David A. Williams, employed as a seaman? Yes \_\_\_\_ No \_\_\_\_

Was Plaintiff, Lakesa Hill-Hunter, employed as a seaman? Yes \_\_\_\_ No \_\_\_\_

Was Plaintiff, Lisa Hill, employed as a seaman? Yes \_\_\_\_ No \_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Special Interrogatory Number 2

Was Showboat the employer of Plaintiff David A. Williams?    Yes \_\_\_ No \_\_\_

Was Showboat the employer of Plaintiff Lakesa Hill-Hunter? Yes \_\_\_ No \_\_\_

Was Showboat the employer of Plaintiff Lisa Hill? Yes \_\_\_ No \_\_\_

Date \_\_\_\_\_

Foreperson

### **Jury Verdict Form 1**

Has Plaintiff shown by a preponderance of the evidence that he or she was fired because of this lawsuit? If you answer this question yes, you should consider the issue of damages. If you answer this question no, do not consider damages. You are to consider and answer this question separately for each Plaintiff.

	<u>Yes</u>	<u>No</u>	<u>Damages</u>
John H. Harkins	____	____	Lost wages in the following amount \$ _____  Compensatory damages in the following amount \$ _____  Punitive damages in the following amount \$ _____  Total: _____
Peter Stofcik, Jr.	____	____	Lost wages in the following amount \$ _____  Compensatory damages in the following amount \$ _____  Punitive damages in the following amount \$ _____  Total: _____
Wallie Del Toro	____	____	Lost wages in the following amount \$ _____  Compensatory damages in the following amount \$ _____  Punitive damages in the following amount \$ _____  Total: _____
Howard Cannon	____	____	Lost wages in the following amount \$ _____  Compensatory damages in the following amount \$ _____  Punitive damages in the following amount \$ _____  Total: _____
David A. Williams	____	____	Lost wages in the following amount \$ _____  Compensatory damages in the following amount \$ _____  Punitive damages in the following amount \$ _____  Total: _____
Lisa Hill	____	____	Lost wages in the following amount \$ _____

			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Michael S. Metevia	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Daniel T. O'Brien	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Louis E. Kelly	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Darrin Benton	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Shayn Keeton	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____
Dennis Arnold	_____	_____	Lost wages in the following amount \$ _____
			Compensatory damages in the following amount \$ _____
			Punitive damages in the following amount \$ _____
			Total: _____

Tammie Jablonski                    \_\_\_\_\_

Lost wages in the following amount \$ \_\_\_\_\_

Compensatory damages in the following amount \$ \_\_\_\_\_

Punitive damages in the following amount \$ \_\_\_\_\_

Total: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

**Jury Verdict Form 2**

Has Plaintiff, Ofelia Cuevas, shown by a preponderance of the evidence that she was forced to resign her position as a fire watch because she joined this lawsuit?

Yes \_\_\_\_ No \_\_\_\_

If yes, we assess damages in the amount of:

Lost wages in the following amount \$ \_\_\_\_\_

Compensatory damages in the following amount \$ \_\_\_\_\_

Punitive damages in the following amount \$ \_\_\_\_\_

Total: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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