

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

MINDY GILSTER,
Plaintiff,

vs.

PRIMEBANK, PRIMEBANK, INC.,
and JOSEPH STRUB,
Defendants.

No. C 10-4084-MWB

JURY INSTRUCTIONS

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

As I explained during jury selection, this is an action by plaintiff Mindy Gilster against defendants Primebank, Primebank, Inc., and Joseph Strub. For practical reasons, I will refer to Primebank and Primebank, Inc., simply as “Primebank.” Ms. Gilster seeks damages on her claims of sexual harassment and retaliation for complaining about sexual harassment in violation of federal and Iowa law.

You have been chosen and sworn as jurors to try the issues of fact related to the plaintiff’s claims. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons and business entities, including plaintiff Gilster and defendants Strub and Primebank, stand equal before the law, and each is entitled to

the same fair consideration. However, Primebank can act only through its agents or employees, and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

You will indicate your verdict in a Verdict Form, a copy of which is attached to these Instructions. A Verdict Form is simply a written notice of your decision. When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

I will explain how you are to determine whether or not Ms. Gilster has proved her claims. First, however, I must explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

INSTRUCTION NO. 2 - BURDEN OF PROOF

Your verdict depends on what facts have been proved. Facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
 - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
 - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one. Remember that the burden applicable in this case is proof “by the greater weight of the evidence,” not proof “beyond a reasonable doubt.”

INSTRUCTION NO. 3 - DEFINITION OF EVIDENCE

Evidence is

- Testimony. Testimony may be either “live” or “by deposition.” A deposition is testimony taken under oath before the trial and preserved in writing or on video. Consider that testimony as if it had been given in court.
- Answers to interrogatories. An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.
- Exhibits admitted into evidence. Just because an exhibit may be shown to you does not mean that it is more important than any other evidence.
- Stipulations, which are agreements between the parties. If the parties stipulate that certain facts are true, then you must treat those facts as having been proved.

Evidence is not

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers

- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact. An example is 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. An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window.
- You should consider both kinds of evidence, because the law makes no distinction between their weight. The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

INSTRUCTION NO. 4 - TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- The reasons and perceptions on which the opinion is based
- Any reason that the witness may be biased, and
- All of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 5 - SEXUAL HARASSMENT

Ms. Gilster's first claim against Mr. Strub and Primebank is that Mr. Strub sexually harassed her. Both the harassing supervisor and the employer can be held liable for harassment by the supervisor.

To win on her claim of sexual harassment, Ms. Gilster must prove the following elements:

***One*, Ms. Gilster was subjected to sexually offensive remarks and behavior from Mr. Strub.**

***Two*, such conduct was unwelcome.**

Conduct was "unwelcome," if Ms. Gilster did not solicit or invite the conduct and regarded the conduct as undesirable or offensive.

***Three*, such conduct was based on Ms. Gilster's sex.**

Conduct "based on sex"

- may, but does not have to be, motivated by sexual desire
- may include conduct directed at a woman because of her gender, even if it was not sexual in nature
- must have exposed members of one sex to disadvantageous terms or conditions of employment to which members of the other sex were not exposed.

***Four*, such conduct *either* (a) caused a significant change in Ms. Gilster's employment status, *or* (b) was sufficiently severe or pervasive that Ms. Gilster**

did find, and a reasonable person in her position would have found, that her working environment was hostile.

For you to find that this element has been proved, the plaintiff must prove *either* alternative (a) *or* alternative (b). She does not have to prove both.

(a) A “significant change in employment status” includes such things as

- firing
- failing to promote
- reassigning the employee to a position with significantly different responsibilities, or
- causing a significant change in benefits

In most cases, a “significant change in employment status” inflicts direct economic harm.

(b) If the harassment did not result in a significant change in employment status, the harassment must have been sufficiently severe or pervasive to affect a term, condition, or privilege of employment. Conduct must have been extreme and not merely rude or unpleasant. Simple teasing, offhand comments, sporadic use of abusive language, and gender-related jokes do not amount to discriminatory changes in the terms and conditions of employment or sufficiently severe or pervasive harassment. The work environment must have been so filled with sexually discriminatory intimidation, ridicule, and insult that it altered a term, condition, or privilege of employment. An isolated incident is not enough, unless it was extremely serious.

To determine whether the conduct was sufficiently severe or pervasive that a reasonable person in the plaintiff’s position would have found that the plaintiff’s working environment was hostile, you must consider the following circumstances:

- the frequency of the conduct
- the severity of the conduct
- whether the conduct was physically threatening or humiliating or merely offensive
- whether the conduct unreasonably interfered with the plaintiff's work performance
- the effect of the conduct on the plaintiff's psychological well-being
- whether the conduct discouraged the plaintiff from remaining on the job; and
- whether the conduct caused the plaintiff economic injury

No single circumstance is required in order to find that a reasonable person would have found that the working environment was hostile.

The evidence must also show that Ms. Gilster did actually find that her working environment was hostile.

If Ms. Gilster proves elements one, two, three, and either four (a) or four (b), or both four (a) and four (b), then you must find in her favor on her harassment claim against Mr. Strub and Primebank.

INSTRUCTION NO. 6 - RETALIATION

Ms. Gilster's second claim against Mr. Strub and Primebank is that Mr. Strub and Primebank retaliated against her for complaining about or opposing Mr. Strub's sexual harassment or retaliation.

To win on her claim of retaliation against a particular defendant, Ms. Gilster must prove the following elements:

One, Ms. Gilster complained about or opposed conduct that she reasonably believed was sexual harassment or retaliation or both.

The plaintiff

- does not have to prove that the conduct she complained about or opposed was actually unlawful sexual harassment or unlawful retaliation or both
- does have to prove that she had a reasonable, good faith belief that the conduct she complained about or opposed was unlawful sexual harassment or unlawful retaliation or both

The plaintiff's complaint or opposition may be stated

- through the employer's complaint procedure
- to a supervisor
- to the employer's human resources department, or
- to an appropriate agency, such as the Iowa Civil Rights Commission (ICRC) or the Equal Employment Opportunity Commission (EEOC).

Two, the defendant took materially adverse action against Ms. Gilster.

“Materially adverse action” is action that might well have persuaded a reasonable employee not to file or support a complaint of discrimination.

Three, Ms. Gilster’s complaints or opposition were a determining factor in the defendant’s decision to take adverse action against her.

The plaintiff’s complaints or opposition were a “determining factor”

- if the defendant would not have taken the adverse action against the plaintiff but for the plaintiff’s complaints or opposition
- even if the complaints or opposition were not the only reason for the adverse action taken by the defendant

To decide whether the plaintiff’s complaints or opposition were a “determining factor,” you may consider

- whether the defendant’s stated reasons for his or its actions are the real reasons or a pretext or a false “cover story” to hide or justify retaliation
- whether the closeness or distance in time between the plaintiff’s complaints or opposition and the defendant’s adverse actions makes it more or less likely that the complaints were a reason for the defendant’s adverse actions

You may not find in Ms. Gilster’s favor on her retaliation claim just because you might disagree with the defendant’s actions or believe them to be harsh or unreasonable.

If Ms. Gilster has proved all three of these elements as to a particular defendant, then you must find in her favor on her retaliation claim against that defendant.

INSTRUCTION NO. 7 - DAMAGES: IN GENERAL

If you find in Ms. Gilster's favor on one or more of her claims against either or both defendants, then you must determine the amount of damages to which she is entitled. You must award Ms. Gilster such sum as you find will fairly and justly compensate her for any damages that you find she sustained as a direct result of the conduct at issue in any claim on which she has prevailed.

The damages in question are the following:

- "compensatory" or "actual" damages, to compensate Ms. Gilster for any emotional distress that she suffered, any wages and fringe benefits that she lost, and any medical expenses that she incurred as a direct result of the defendant's misconduct, and
- "punitive" damages, to punish the defendant for engaging in the misconduct at issue and to deter the defendant and others from engaging in such misconduct in the future

I will explain in the next Instructions how you are to determine specific damages. However, I will now explain some general rules for awarding damages.

In deciding what amounts, if any, to award for these kinds of damages,

- Decide what damages, if any, have been proved, based upon the evidence
- Do not base the amount of damages upon speculation, guesswork, conjecture, sympathy, or prejudice

- Do not decide the amount of damages by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your award of damages. Instead, use your sound judgment based upon an impartial consideration of the evidence.

Any award of future damages

- must be reduced to “present value,” which is a sum of money paid now, in advance, that, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses
- may be determined in light of Ms. Gilster’s health, habits, occupation, and lifestyle, and normal life expectancy of 49.8 years (although this statistic is not conclusive).

**INSTRUCTION NO. 8 - DAMAGES:
COMPENSATORY DAMAGES**

Ms. Gilster seeks the following kinds of “compensatory” or “actual” damages:

“Emotional distress damages”

- Damages for “emotional distress” are the amount of damages that will reasonably compensate the plaintiff for the following:
 - emotional pain
 - suffering
 - inconvenience
 - mental anguish
 - fear
 - humiliation
 - anger
 - sadness
 - physical distress, and
 - loss of enjoyment of life

that were caused by the wrongful conduct of the defendants at issue, from the time of the wrongful conduct until the time that you give your verdict.

- You may also award future emotional distress damages, if you find that Ms. Gilster's emotional distress caused by the wrongful conduct of the defendants at issue is reasonably certain to continue in the future.
- The amount, if any, that you award for emotional distress
 - cannot be measured by an exact or mathematical standard
 - does not require the introduction of evidence of the monetary value of such damages
 - must be based on your sound judgment and impartial consideration of the evidence
- Ms. Gilster is entitled to recover emotional distress damages caused by aggravation of pre-existing emotional problems, if
 - she had emotional problems before the defendants' wrongful conduct, and
 - those problems were aggravated by the defendants' wrongful conduct, causing further suffering

She is not entitled to recover for any emotional problems that existed before the defendants' wrongful conduct or for any emotional problems that she now has that were not caused by the defendants' wrongful conduct.

- The amount of emotional distress damages, if any, that you award for each claim may be the same or different, but the damages awarded must reflect the amount of emotional distress caused to the plaintiff by the wrongful conduct at issue in that claim.

“Backpay”

- Damages for “backpay” are the amount of wages and benefits that Ms. Gilster lost because of the defendants’ wrongful conduct.
- “Backpay” is calculated as follows:
 - Determine the amount of any wages and the value of fringe benefits that Ms. Gilster would have earned from employment with Primebank from the date of her termination until the date of your verdict, *then*
 - Subtract the amount of the wages and the value of fringe benefits, if any, that Ms. Gilster actually did earn during that time from other employment after she was terminated from her job with Primebank.
- You may award “backpay” damages on each claim on which Ms. Gilster prevails, if you find that such damages are a direct result of the wrongful conduct alleged in that claim. However, Ms. Gilster can recover only one award of “backpay” damages, even if she prevails on both of her claims. I will limit her recovery to one award of “backpay” damages.

“Medical Expenses”

- Damages for “medical expenses” are the amount of past medical expenses caused by the wrongful conduct of the defendants.

- You may award “medical expenses” damages on each claim on which Ms. Gilster prevails, if you find that such damages are a direct result of the wrongful conduct alleged in that claim. However, Ms. Gilster can recover only one award of “medical expenses” damages, even if she prevails on both of her claims. I will limit her recovery to one award of “medical expenses” damages.

**INSTRUCTION NO. 9 - DAMAGES:
AFTER-ACQUIRED EVIDENCE**

“After-acquired evidence” is evidence of employee misconduct that is only discovered after the employee has already been terminated. Once an employer learns about employee misconduct that would have led to a legitimate discharge, the employer is not required to ignore that information, even if the information is acquired during the course of a lawsuit and even if it might not have been discovered without the lawsuit. After-acquired evidence of employee misconduct does not bar an employer’s liability for sexual harassment or retaliation, but it may limit the time period for which the employee can recover “backpay” and “medical expenses” damages to the period before the employer discovered the misconduct.

Here, the defendants contend that Ms. Gilster’s damages for “backpay” and “medical expenses” should be “cut off” as of September 1, 2011, the date that they discovered that, while she was still employed at Primebank, she had been forwarding e-mails to her attorneys from her work e-mail during work hours.

To prove their partial defense to damages, the defendants must prove both of the following elements:

One, on September 1, 2011, the defendants discovered that, while Ms. Gilster was still employed at Primebank, she had been forwarding e-mails to her attorneys from her work e-mail during work hours.

***Two*, even if the defendants had not terminated Ms. Gilster on February 10, 2011, they would have terminated Ms. Gilster on September 1, 2011, for forwarding e-mails to her attorneys from her work e-mail during work hours.**

To prove this defense,

- the defendants must prove that Ms. Gilster's conduct was of such severity that they would, in fact, have terminated her on that ground alone, if they had known of it at the time that they discharged her, not just that they might have done so

If the defendants have proved both elements of this partial defense to damages, then you must limit any award of "backpay" or "medical expenses" to the period from the date of Ms. Gilster's termination until September 1, 2011.

INSTRUCTION NO. 10 - DAMAGES: PUNITIVE DAMAGES

In addition to the “compensatory damages” explained in Instruction No. 8, the law permits you to award punitive damages under certain circumstances. In this case, punitive damages cannot be awarded against defendant Strub; they can only be awarded, if at all, against defendant Primebank. Punitive damages are not awarded to compensate the plaintiff, but to punish the defendant for engaging in the wrongful conduct at issue and to deter it and others from engaging in such wrongful conduct in the future. You should consider Ms. Gilster to be made whole for her injuries by the “compensatory damages” awarded under Jury Instruction No. 8.

To get punitive damages, Ms. Gilster must prove the following by the greater weight of the evidence:

One, punitive damages should be awarded.

You may award punitive damages only if the defendant acted

- with malice, which is an evil motive or intent,
- or**
- with reckless indifference to Ms. Gilster’s rights, which means that the defendant either knew that sexual harassment or retaliation violated the law or acted with reckless disregard for whether harassment or retaliation violated the law

In deciding whether or not to award punitive damages, you should also consider whether the defendant’s conduct

was reprehensible. To decide whether conduct was “reprehensible,” you may consider the following:

- whether the harm suffered by Ms. Gilster was physical or economic or both
- whether there was violence, intentional malice, or reckless disregard for human health or safety
- whether the defendant’s harassment or retaliation against Ms. Gilster was a repetition of the same sort of wrongful conduct

You may not award punitive damages if it has been proved that the defendant made a good-faith effort to comply with the law prohibiting sexual harassment or retaliation.

Two, the amount of any punitive damages.

You must use reason in setting the amount of any punitive damages. You should consider the following:

- how much harm the defendant’s conduct caused Ms. Gilster
- what amount of punitive damages would bear a reasonable relationship to the harm caused to Ms. Gilster, although a higher award of punitive damages may be appropriate based on particularly reprehensible conduct
- what amount of punitive damages, in addition to other damages already awarded, is needed, considering the defendant’s financial condition, to deter the defendant and others from similar wrongful conduct in the future

On the other hand, you must not consider the following:

- bias, prejudice, or sympathy toward any party

- punishment of the defendant for harm to anyone other than Ms. Gilster

You may award punitive damages against Primebank or you may refuse to award punitive damages at all. Whether or not to award punitive damages, and in what amount, are entirely for you to decide.

INSTRUCTION NO. 11 - OUTLINE OF TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements. An opening statement is not evidence, but simply a summary of what the lawyer expects the evidence to be.
- The plaintiff will present evidence and call witnesses, and the lawyer for the defendant may cross-examine them.
- The defendants may present evidence and call witnesses, and the lawyer for the plaintiff may cross-examine those witnesses.
- The parties will make their closing arguments to summarize and interpret the evidence for you. Like opening statements, closing arguments are not evidence.
- I will give you the last Instruction, on “deliberations.”
- You will retire to deliberate on your verdict.

INSTRUCTION NO. 12 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

INSTRUCTION NO. 13 - BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

INSTRUCTION NO. 14 - NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

INSTRUCTION NO. 15 - CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them

when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

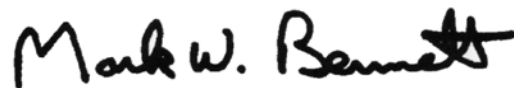
INSTRUCTION NO. 16 - DELIBERATIONS

In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court.
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment. However, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors.
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.
- Remember that you are not advocates, but judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.
- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.
- Your verdict on each question submitted must be unanimous.
- Complete and sign one copy of the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 3rd day of April, 2012.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

MINDY GILSTER,
Plaintiff,

No. C 10-4084-MWB

vs.

PRIMEBANK, PRIMEBANK, INC.,
and JOSEPH STRUB,
Defendants.

VERDICT FORM

On the claims of plaintiff Mindy Gilster, we, the Jury, find as follows:

SECTION 1: SEXUAL HARASSMENT			
Step 1: Verdict	<p>On Ms. Gilster’s claim of sexual harassment, as explained in Instruction No. 5, in whose favor do you find? <i>(If you find in favor of the defendants, do not answer any more questions in this section. Instead, skip to Section II of the Verdict Form on Ms. Gilster’s retaliation claim. However, if you find in Ms. Gilster’s favor, please continue with the remaining steps in this section of the Verdict Form.)</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; text-align: center;">___ Ms. Gilster</td> <td style="width: 50%; border: none; text-align: center;">___ The defendants</td> </tr> </table>	___ Ms. Gilster	___ The defendants
___ Ms. Gilster	___ The defendants		
Step 2: Nature of Harassment	<p>If you answered “yes” in Step 1, has Ms. Gilster proved either or both of the alternatives for element <i>four</i>, as explained in Instruction No. 5? <i>(You may mark either or both of these alternatives.)</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">___ (a) The harassment resulted in a significant change in employment status</td> </tr> <tr> <td style="border: none;">___ (b) The harassment was sufficiently severe or pervasive to create a hostile environment</td> </tr> </table>	___ (a) The harassment resulted in a significant change in employment status	___ (b) The harassment was sufficiently severe or pervasive to create a hostile environment
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Step 3: After- acquired Evidence	Have the defendants proved that, even if Ms. Gilster had not been terminated on February 10, 2011, the defendants would have terminated her employment on September 1, 2011, because she had been forwarding e-mails to her attorneys from her work e-mail during work hours? <i>(Please see Instruction No. 9. Remember that, if you answer “yes,” Ms. Gilster can only recover “backpay” and “medical expenses,” if any, through September 1, 2011.)</i>	
	_____ Yes	_____ No
Step 4: Damages	If you found in favor of Ms. Gilster on her sexual harassment claim in Step 1 , what damages, if any, do you award for the following items? <i>(Please see Instruction No. 8, on “compensatory damages,” and Instruction No. 10, on “punitive damages.”)</i>	
	\$ _____ for past emotional distress	
	\$ _____ for future emotional distress	
	\$ _____ for backpay from the date of discharge to the date of this verdict, if you answered “no” in Step 3 , OR \$ _____ for backpay from the date of discharge to September 1, 2011, if you answered “yes” in Step 3 .	
	\$ _____ for past medical expenses from the date of discharge to the date of this verdict, if you answered “no” in Step 3 , OR \$ _____ for past medical expenses from the date of discharge to September 1, 2011, if you answered “yes” in Step 3 .	
	\$ _____ for punitive damages against Primebank	
SECTION II: RETALIATION		
Step 1: Liability	In whose favor do you find on Ms. Gilster’s claim of retaliation? <i>(If you find in favor of both defendants, do not answer any more questions in this section. Instead, please notify the CSO that you have reached a verdict. However, if you find in Ms. Gilster’s favor against either or both defendants, please continue with the remaining steps in this section of the Verdict Form.)</i>	
	_____ Ms. Gilster	or _____ Mr. Strub
	_____ Ms. Gilster	or _____ Primebank

Step 2: After- acquired Evidence	Have the defendants proved that, even if Ms. Gilster had not been terminated on February 10, 2011, the defendants would have terminated her employment on September 1, 2011, because she had been forwarding e-mails to her attorneys from her work e-mail during work hours? <i>(Please see Instruction No. 9. Remember that, if you answer "yes," Ms. Gilster can only recover "backpay" or "medical expenses" through September 1, 2011.)</i>	
	_____ Yes	_____ No
Step 3: Damages	If you found in favor of Ms. Gilster on her retaliation claim against either Mr. Strub or Primebank (or both) in Step 1 , what damages, if any, do you award for the following items? <i>(Please see Instruction No. 8, on "compensatory damages," and Instruction No. 10, on "punitive damages.")</i>	
	\$ _____ for past emotional distress	
	\$ _____ for future emotional distress	
	\$ _____ for backpay from the date of discharge to the date of this verdict, if you answered "no" in Step 2 , OR \$ _____ for backpay from the date of discharge to September 1, 2011, if you answered "yes" in Step 2 .	
	\$ _____ for past medical expenses from the date of discharge to the date of this verdict, if you answered "no" in Step 2 , OR \$ _____ for past medical expenses from the date of discharge to September 1, 2011, if you answered "yes" in Step 2 .	
	\$ _____ for punitive damages against Primebank	

Date: _____ **Time:** _____

Foreperson	Juror
Juror	Juror

Juror

Juror

Juror

Juror