

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

NDN COLLECTIVE, SUNNY RED BEAR,
NICK COTTIER, BRE JACKSON, MARY
BOWMAN, and GEORGE BETTELYOUN

Plaintiffs,

v.

RETSEL CORPORATION, d/b/a GRAND
GATEWAY HOTEL and d/b/a CHEERS
SPORTS LOUNGE AND CASINO,

Defendant,

and

RETSEL CORPORATION, d/b/a GRAND
GATEWAY HOTEL and d/b/a CHEERS
SPORTS LOUNGE AND CASINO, AND
NICHOLAS UHRE,

Counterclaim
Plaintiffs,

v.

NDN Collective,

Counterclaim
Defendant.

5:22-CV-05027-KES

**FINAL INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – DISTINCT CLAIMS AND PARTIES

Different aspects of this case involve different parties. Each instruction will identify the parties to whom it applies. Pay particular attention to the parties named in each instruction.

In your deliberations, you will consider and decide five distinct claims based on the application of your findings of fact to the laws I will provide to you.

1. Did defendant Retsel Corporation discriminate against any of the six plaintiffs on the basis of race?
2. Did defendant Retsel Corporation, through its officer or employee, Connie Uhre, commit the intentional tort of assault against plaintiff Sunny Red Bear?
3. Did counterclaim defendant NDN Collective, through its agent or employee, defame counterclaim plaintiff Retsel Corporation?
4. Did counterclaim defendant NDN Collective, through its agent or employee, defame counterclaim plaintiff Nicholas Uhre?
5. Did counterclaim defendant NDN Collective, through its agent or employees, commit the tort of nuisance against counterclaim plaintiff Retsel Corporation?

Although these claims have been tried together, each is separate from the others, and each party is entitled to have you separately consider each claim as it affects each party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would have if each claim had been tried before you separately.

FINAL INSTRUCTION NO. 3 – CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood. That may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 4 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight, if any, you think it deserves. If you believe that any witness testifying in this case has knowingly sworn falsely to any material matter in this case, then you may reject all of the testimony of the witness.

FINAL INSTRUCTION NO. 5 – TRANSCRIPT OF RECORDED CONVERSATION

As you have seen, closed captioning has been added to the videos you have seen. The closed captioning was offered for the limited purpose of helping you follow the conversation as you listened to the recording. The recording is evidence for you to consider. The captioning, however, is not evidence. You are specifically instructed that whether the closed captions correctly or incorrectly reflect the conversations is entirely for you to decide based upon your own examination of the closed captions in relation to what you heard on the recording. The recording itself is the primary evidence of its own contents. If you decide that the closed captioning was in any respect incorrect or unreliable, you should disregard it to that extent. Differences between what you heard in the recording and read in the closed captions may be caused by such things as the inflection in a speaker's voice, or by inaccuracies in the closed captions. You should, therefore, rely on what you hear rather than what you read when there is a difference.

FINAL INSTRUCTION NO. 6 – REDACTED EVIDENCE

You have seen records or other evidence that contain redacted information. You are not to guess or speculate as to what sort of information was redacted. Further, you should not make assumptions or inferences that prejudice either party simply because information was redacted for certain items of evidence.

FINAL INSTRUCTION NO. 7 – RECOLLECTION OF EVIDENCE

If any reference by the court or by the parties to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the court or of the parties.

You are the sole judges of the evidence received in this case.

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observation in your daily affairs of life.

FINAL INSTRUCTION NO. 8 – BURDEN OF PROOF IN A CIVIL CASE

You must decide whether certain facts have been proved. A fact has been proved by the “greater weight of the evidence” if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

When a party has the burden of proving any claim or defense by “clear and convincing evidence,” it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by the greater weight of the evidence, but it does not require proof beyond a reasonable doubt.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true” or “clear and convincing evidence.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 9 – 42 U.S.C. § 1981: EQUAL RIGHTS UNDER THE
LAW

United States Code Section 1981 of Title 42 is a Federal Civil Rights statute that prohibits discrimination in the making and enforcement of contracts. Plaintiffs, NDN Collective, Sunny Red Bear, Nick Cottier, Bre Jackson, Mary Bowman, and George Bettelyoun allege that defendant Retsel Corporation violated this statute when defendant Retsel Corporation discriminated against them on the basis of race and deprived them of the right to make a contract with the Grand Gateway Hotel. Your verdict must be for a plaintiff and against the defendant if all the following elements have been proved by the greater weight of the evidence:

First, the plaintiff is a member of a protected class;

The parties agree that Sunny Red Bear, George Bettelyoun, Bre Jackson, Mary Bowman, Nick Cottier, and NDN Collective are Native American, and therefore a member of a protected class. You must find that all of these plaintiffs have proved the first element.

Second, the plaintiff actively sought to enter into a contract with Retsel Corporation;

The law does not require a plaintiff to show a completed contract. A tangible attempt to seek services is sufficient.

The law does not require a plaintiff to prove what would have been done with the goods or services the plaintiff attempted to purchase. It is sufficient if a plaintiff shows an attempt to contract with the defendant and that the plaintiff would have had some right or interest under the contract if it has been completed.

Third, Retsel Corporation denied the plaintiff an opportunity to enter into a contract or receive the full benefits and services that a reasonable person would expect in that hotel;

The “right to contract,” within the meaning of the statute on which the plaintiffs base their claims, includes the right to “the

enjoyment of benefits, privileges, terms, and conditions of the contractual relationship.” More specifically, it includes the right of all customers of a hotel to receive more than just accommodations. It includes the right to the same treatment in services, the right to be free from hostile treatment based on race, and the right to be served in an atmosphere that a reasonable person would expect in the chosen place.

A plaintiff may prove this element by showing that the defendant interfered with the plaintiff’s right to contract by blocking the attempt to create a contractual relationship. Interference with the creation of a contractual relationship satisfies this element.

Retsel Corporation is a corporation and can act only through its officers and employees. Any act or omissions of an officer or employee within the scope of his or her employment is the act or omission of the corporation for which they were then acting.

And fourth, the plaintiff’s race was a but-for cause of Retsel Corporation’s conduct.

Each plaintiff must prove that his or her race was the *but-for* cause of being denied an opportunity to enter a contract. Race is a *but-for* cause of the discrimination if, had plaintiffs not belonged to a racial minority group, they would have been given the opportunity to enter a contract.

But-for causation does not require that race was the only reason for defendant’s conduct. So long as race was one cause of the defendant’s conduct toward the plaintiff, that is enough to find for the plaintiff.

You may find that wrongful treatment was “because of race” if you find, by the greater weight of the evidence, that a legitimate, non-discriminatory reason offered by the defendant for the treatment is not the true reason, but is instead a pretext to hide discrimination because of plaintiff’s race.

Unless a particular plaintiff proves all of these elements by the greater weight of the evidence, your verdict must be for the defendant on that plaintiff’s claim. On the other hand, if you find that a particular plaintiff has proved all of these

elements by the greater weight of the evidence, then that plaintiff is entitled to damages in some amount.

FINAL INSTRUCTION NO. 10 – “TESTERS”

You have heard reference to the term “testers.” Originally, the term “testers” was used to describe an individual who, “without intent to accept employment, poses as a job applicant in order to gather evidence of discriminatory hiring practices.” Testing can involve sending one black applicant and one white applicant with identical credentials to apply for a job, although the person has no intent to accept the job if offered.

In the hotel context, a tester may be a person who has not traveled to, nor has any intent to travel to, the hotel in question, and has “no plans to reserve a room,” or to gain the benefits of contracting with the hotel either for themselves or anyone else. Such a person cannot prevail in a suit brought under a statute such as the Federal Civil Rights Act. A plaintiff must intend, and subsequently attempt to, reserve and pay for the hotel room.

You must determine whether plaintiffs Red Bear, Jackson, Bowman, Cottier, and NDN Collective intended to reserve rooms at Grand Gateway Hotel and made an attempt to do so. You may consider whether they were present in the hotel at the time. You must determine whether the plaintiffs’ sole intention was to “test” the alleged discriminatory policy and thus had no intention to reserve and pay for the room.

If you find that any of the plaintiffs were only testing the alleged discriminatory policy, and would not have reserved or paid for the room, you must find in favor of Retsel Corporation and against that plaintiff on the Section 1981 claim.

FINAL INSTRUCTION NO. 11 – ASSAULT

Plaintiff, Sunny Red Bear, claims that she was assaulted by Connie Uhre, and that Retsel Corporation is liable.

Connie Uhre has been found by a court to have committed an assault on Plaintiff Sunny Red Bear. You should therefore consider this fact as proven. The only issues for you to decide on the assault claim are whether Red Bear proved by the greater weight of the evidence that Retsel Corporation is liable for Connie Uhre's assault of Red Bear, that Red Bear suffered damages caused by the assault, and the amount of damages, if any, Red Bear is entitled to recover.

FINAL INSTRUCTION NO. 12 – ASSAULT; LIABILITY OF CORPORATION FOR
ACT OF OFFICER OR EMPLOYEE

To determine whether Retsel Corporation is liable for the assault committed by Connie Uhre, you must consider the following.

Retsel Corporation is a corporation and can act only through its officers and employees. Any act or omission of an officer or employee within the scope of her employment is the act or omission of the corporation for which she was then acting.

To determine whether Connie Uhre was acting within the scope of her authority, you must:

First, determine whether Connie Uhre’s action was entirely motivated by her personal interests or whether her action had a dual purpose, that is, to serve Retsel Corporation and to further Connie Uhre’s personal interests. If Connie Uhre’s actions were entirely motivated by her personal interests, then the actions were not within the scope of her authority and Retsel Corporation may not be held liable for it. If the actions were for a dual purpose, consider the second element.

Second, if you find that Connie Uhre’s actions had a dual purpose, you must next determine whether the action was foreseeable. That means that there must be a connection between Connie Uhre’s role as an officer and the activity that caused the assault. Foreseeability includes a range of conduct that is fairly regarded as typical of or broadly incidental to the Corporation’s business.

In determining the foreseeability of Connie Uhre’s actions, consider the following factors: whether or not the act is commonly done by such an employee in the business; whether the business has reason to expect such an act; and the extent of the departure of the act from the norm; and whether the act is criminal.

And third, if you find that Connie Uhre’s action was foreseeable, you must determine whether the conduct is so unusual or startling that it

would be unfair to include the loss caused by the injury among the costs of Retsel Corporation's business.

If you find that Connie Uhre was acting within the scope of her authority as the president of Retsel at the time of the assault, then any act or omission of Connie Uhre at the time is considered an act or omission of Retsel Corporation, and Retsel Corporation is liable.

If you find by the greater weight of the evidence that Connie Uhre was not acting within the scope of her authority as an officer of Retsel Corporation at the time of the assault, then Retsel Corporation is not liable.

FINAL INSTRUCTION NO. 13 – DEFAMATION

Nicholas Uhre and Retsel Corporation allege that NDN Collective, through the conduct of its agents or employees, defamed each of them.

You must find for either or both of the counterclaim plaintiffs Nicholas Uhre and Retsel Corporation and against counterclaim defendant NDN Collective, if the following elements have been proven by clear and convincing evidence:

First, that NDN Collective, through its agents or employees, published—to a third party—a false and defamatory statement of fact concerning either Nicholas Uhre or Retsel Corporation, or both, or repeated or spread a false and defamatory statement of fact concerning either Nicholas Uhre or Retsel Corporation, or both, after it was published by someone else;

False and defamatory statements are statements that are: (1) not true, and (2) tend to harm the reputation of another as to lower him or it in the estimation of the community or to deter third persons from associating or dealing with him or it.

“Publication” means intentionally or recklessly communicating the false and defamatory statement to any person other than the one being defamed.

Second, NDN Collective, through its agents or employees, acted with actual malice for whether the statement was true or false;

Actual malice may be shown if the defendant made a statement with knowledge of its falsity or a reckless disregard for the truth.

To show actual malice, it requires a showing of (1) more than a defendant’s failure to investigate; (2) that the defendant entertained serious doubts as to the truth; (3) that the defendant had a high degree of awareness of the falsity; and (4) that the defendant had obvious reason to doubt the veracity or accuracy of the information.

And third, the false and defamatory statement of fact either: (1) caused Nicholas Uhre or Retsel Corporation, or both, to be exposed to hatred, contempt, ridicule, strong criticism, or verbal abuse, or caused them to be shunned or avoided, or had a tendency to injure them in their occupation; or (2) caused harm to Nicholas Uhre or Retsel Corporation, or both.

If you find that Nicholas Uhre or Retsel Corporation have shown by clear and convincing evidence that they were defamed, then you must determine whether Hermus Bettelyoun was acting within the scope of his employment with NDN Collective at the time of the alleged defamation. To make that determination, consider Instruction No. 14.

FINAL INSTRUCTION NO. 14 – VICARIOUS LIABILITY FOR NDN COLLECTIVE

It is alleged that Hermus Bettelyoun was an employee of NDN Collective. If you find Hermus Bettelyoun was an employee of NDN collective, then you must determine if Hermus Bettelyoun was acting within the scope of his employment at the time of the alleged defamation.

To determine whether Hermus Bettelyoun was acting within the scope of his employment or agency, you must:

First, determine whether Hermus Bettelyoun's actions were wholly motivated by his personal interests or whether his actions had a dual purpose, that is, to serve NDN Collective and to further Hermus Bettelyoun's personal interests. If Hermus Bettelyoun's actions were entirely motivated by his personal interests, then the actions were not within the scope of his employment or agency and NDN Collective may not be held liable for it. If the actions were for a dual purpose, consider the second element.

Second, if you find that Hermus Bettelyoun's actions had a dual purpose, you must next determine whether the actions were foreseeable. That means there must be a connection between Hermus Bettelyoun's employment or agency and the activity that caused the alleged defamation described in Instruction No. 13. Foreseeability includes a range of conduct that is fairly regarded as typical of or broadly incidental to the business of the employer.

In determining the foreseeability of Hermus Bettelyoun's actions, consider the following factors: whether or not the act is commonly done by such an employee; the time, place and purpose of the act; the role of the employee in the business; whether the business has reason to expect such an act; and the extent of the departure of the act from the norm; and whether the act is criminal.

And third, if you find that Hermus Bettelyoun's actions were foreseeable, you must determine whether the conduct is so unusual or

startling that it would be unfair to include the loss caused by the injury among the costs of NDN Collective's business.

If you find that Hermus Bettelyoun was acting within the scope of his authority as an employee of NDN Collective at the time of the alleged defamation, then any act or omission of Hermus Bettelyoun at the time is considered an act or omission of NDN Collective and NDN Collective is liable.

If you find that Hermus Bettelyoun was not acting within the scope of his authority as an employee of NDN Collective at the time of the alleged defamation, then NDN Collective is not liable.

FINAL INSTRUCTION NO. 15 – NUISANCE

Counterclaim plaintiff Retsel Corporation also alleges it suffered harm because counterclaim defendant NDN Collective, through its agents and employees, created a nuisance by the intentional projection of light onto Grand Gateway Hotel's property and by placing removable paint onto one of the hotel's vehicles.

You must find for Retsel Corporation and against NDN Collective if the following has been proved by the greater weight of the evidence:

That NDN Collective, by unlawfully projecting the light or painting the vehicle, rendered Retsel Corporation insecure in life, or in the use of its property.

A nuisance is a condition which substantially invades and unreasonably interferes with another's use, possession, or enjoyment of property.

You must decide whether the challenged use is reasonable in view of all of the surrounding circumstances.

To determine whether NDN Collective's employees or agents were acting within the scope of their employment or agency, you must determine the following elements:

First, determine whether the actions of NDN Collective's employees or agents were wholly motivated by his or her personal interests or whether his or her actions had a dual purpose, that is, to serve NDN Collective and to further the employees' or agents' personal interests. If the employees' and agents' actions were wholly motivated by his or her personal interests, then the actions are not within the scope of employment or agency and NDN Collective may not be held liable for it. If the actions were for a dual purpose, consider the second element.

Second, if you find that the employees' and agents' actions had a dual purpose, you must next determine whether the actions were foreseeable. That means there must be a connection between the employee's

or agent's employment or agency and the activity that caused the alleged nuisance described in this Instruction. Foreseeability includes a range of conduct which is fairly regarded as typical of or broadly incidental to the business of the employer.

In determining the foreseeability of the employees' or agents' actions, consider the following factors: whether or not the act is commonly done by such an agent; the time, place and purpose of the act; the role of the agent in the organization; whether the organization has reason to expect such an act; and the extent of the departure of the act from the norm; and whether the act is criminal.

Third, if you find that the employees' and agents' actions were foreseeable, you must determine whether the conduct is so unusual or startling that it would be unfair to include the loss caused by the injury among the costs of NDN Collective's business.

If you find that NDN Collective's employees or agents were acting within the scope of their authority as an employee or agent of NDN Collective at the time of the alleged nuisance, then any act or omission of the employee or agent is considered an act or omission of NDN Collective, and NDN Collective is liable.

If you find that NDN Collective's employees or agents were not acting within the scope of their authority as an employee or agent of NDN Collective at the time of the alleged nuisance, then NDN Collective is not liable.

FINAL INSTRUCTION NO. 16 – COMPENSATORY DAMAGES

If you find in favor of a plaintiff or counterclaim plaintiff, then you must determine the damages of each plaintiff and counterclaim plaintiff separately. Return a separate verdict for each plaintiff and counterclaim plaintiff you find entitled to recover and specify the amount that each plaintiff and counterclaim plaintiff should recover. If you find that no plaintiff or counterclaim plaintiff is entitled to recover damages, that shall be the verdict of the jury.

If you find in favor of the plaintiff George Bettelyoun, Bre Jackson, Mary Bowman, or Nick Cottier under Instruction No. 9 then you must award the plaintiff such sum as you find will fairly and justly compensate him or her for damages you find he or she sustained as a direct result of the defendant's conduct as described in Instruction No. 9. Damages for an individual plaintiff may include emotional distress.

If you find in favor of the plaintiff Sunny Red Bear under Instruction No. 9 or Instruction No. 11, then you must award the plaintiff such sum as you find will fairly and justly compensate her for damages you find she sustained as a direct result of the defendant's conduct as described in Instruction No. 9 or Instruction No. 11. Damages for an individual plaintiff may include emotional distress.

If you find in favor of plaintiff NDN Collective, then you must award it such sum as you find will fairly and justly compensate it for damages you find it sustained as a direct result of the defendant's conduct as described in in Instruction No. 9. You cannot award a corporation like NDN Collective damages for emotional distress.

If you find in favor of Nicholas Uhre under Instruction No. 13, then you must award him such sum as you find will fairly and justly compensate him for damages you find he sustained as a direct result of NDN Collective's conduct as described in Instruction No. 13. Damages can include harm to reputation and emotional distress.

If you find in favor of Retsel Corporation under Instruction No. 13 or Instruction No. 15, then you must award it such sum as you find will fairly and justly compensate it for damages you find it sustained as a direct result of NDN Collective's conduct as described in Instructions No. 13 or 15. Damages can include lost profits, economic losses, and harm to reputation. You cannot award a corporation like Retsel Corporation damages for emotional distress.

If you find in favor of any of these plaintiffs or counterclaim plaintiffs on one of their claims, but do not find that their damages have any monetary value for that claim, then you must return a verdict for that plaintiff or counterclaim plaintiffs in the nominal amount of One Dollar (\$1.00).

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

FINAL INSTRUCTION NO. 17 – PUNITIVE DAMAGES

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages. The purpose of awarding punitive damages is to set an example and punish the defendant for conduct that is the result of malice, intentional misconduct, or willful and wanton misconduct.

Malice is not simply the doing of an unlawful or injurious act; it implies that the act complained of was conceived in the spirit of mischief or of indifference to civil obligations. Malice may be inferred from the surrounding facts and circumstances.

Actual malice is a positive state of mind, evidenced by the positive desire and intention to injure another, actuated by hatred or ill will toward that person. Presumed, or legal, malice is malice which the law infers from or imputes to certain acts. Legal malice may be imputed to an act if the person acts willfully or wantonly to the injury of the other in reckless disregard of the other's rights. Hatred or ill will is not always necessary.

Conduct is intentional when one acts for the purpose of causing an invasion of the legally protected interest of another, or acts knowing that an invasion is substantially certain to occur, or in a way that the law forbids. Intent requires more than the existence and appreciation of risk; it requires an intent to bring about an unlawful result.

A hostile intent or a desire to do harm is not required. Rather, the intent required is an intent to bring about an unlawful result. Willful and wanton misconduct is more than negligent conduct, but less than intentional conduct. Conduct is willful and wanton when a person acts or fails to act when the person knows, or should have known, that injury is likely to occur.

Willful and wanton misconduct is more than negligent conduct, but less than intentional conduct. Conduct is willful and wanton when a person acts or fails to act when the person knows, or should have known, that injury is likely to occur.

If you find in favor of plaintiff Sunny Red Bear, Nick Cottier, Bre Jackson, Mary Bowman, George Bettelyoun, or NDN Collective under Instruction No. 9 and if it has been proved that the conduct of Retsel

Corporation was maliciously or recklessly indifferent toward any of these plaintiffs, then you may, but are not required to, award the plaintiff an additional amount of money as punitive damages for the purposes of punishing the defendant and deterring them from engaging in misconduct in the future. You should presume that a plaintiff has been made whole for his or her injuries under Instruction No. 16.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

One, how reprehensible the defendant's conduct was. In this regard, you may consider whether the defendant's conduct that harmed the plaintiff also posed a risk of harm to others, and whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the plaintiff.

Two, how much harm the defendant's wrongful conduct caused the plaintiff. You may not consider harm to others in deciding the amount of punitive damages to award.

Three, what amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for its wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff.

FINAL INSTRUCTION NO. 18 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that a plaintiff has proved a claim, say so.
- If you are convinced that a plaintiff has not proved a claim, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 19 – DUTIES DURING DELIBERATIONS

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

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Do not be afraid to change your opinions if the discussion 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 at all times that you are not advocates. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or 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.**

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated December 19, 2025.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

NDN COLLECTIVE, SUNNY RED BEAR,
NICK COTTIER, BRE JACKSON, MARY
BOWMAN, and GEORGE BETTELYOUN

Plaintiffs,

v.

RETSEL CORPORATION, d/b/a GRAND
GATEWAY HOTEL and d/b/a CHEERS
SPORTS LOUNGE AND CASINO,

Defendant,

and

RETSEL CORPORATION, d/b/a GRAND
GATEWAY HOTEL and d/b/a CHEERS
SPORTS LOUNGE AND CASINO, AND
NICHOLAS UHRE,

Counterclaim
Plaintiffs,

v.

NDN Collective,

Counterclaim
Defendant.

5:22-CV-05027-KES

VERDICT

We the jury, duly impaneled in the above-entitled action and sworn to try the issues therein, unanimously find the following:

Question 1
George Bettelyoun's Discrimination Claim

Question 1(a): On plaintiff George Bettelyoun's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, George Bettelyoun _____ Defendant, Retsel Corporation

If you found in favor of George Bettelyoun, go to Question 1(b). If you did not find in favor of George Bettelyoun, proceed to Question 2.

Question 1(b): If you found for George Bettelyoun, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

If you found for George Bettelyoun, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation: _____

Proceed to Question 2.

Question 2
Sunny Red Bear's Discrimination Claim

Question 2(a): On plaintiff Sunny Red Bear's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, Sunny Red Bear _____ Defendant, Retsel Corporation

If you found in favor of Sunny Red Bear, go to Question 2(b). If you did not find in favor of Sunny Red Bear, proceed to Question 3.

Question 2(b): If you found for Sunny Red Bear, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

If you found for Sunny Red Bear, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation: _____

Proceed to Question 3.

Question 3
Bre Jackson's Discrimination Claim

Question 3(a): On plaintiff Bre Jackson's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, Bre Jackson _____ Defendant, Retsel Corporation

If you found in favor of Bre Jackson, go to Question 3(b). If you did not find in favor of Bre Jackson, proceed to Question 4.

Question 3(b): If you found for Bre Jackson, state the amount of compensatory damages, or write \$1 to award nominal damages: _____.

If you found for Bre Jackson, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation:

Proceed to Question 4.

Question 4
Mary Bowman's Discrimination Claim

Question 4(a): On plaintiff Mary Bowman's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, Mary Bowman _____ Defendant, Retsel Corporation

If you found in favor of Mary Bowman, go to Question 4(b). If you did not find in favor of Mary Bowman, proceed to Question 5.

Question 4(b): If you found for Mary Bowman, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

If you found for Mary Bowman, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation: _____

Proceed to Question 5.

Question 5
Nick Cottier's Discrimination Claim

Question 5(a): On plaintiff Nick Cottier's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, Nick Cottier _____ Defendant, Retsel Corporation

If you found in favor of Nick Cottier, go to Question 5(b). If you did not find in favor of Nick Cottier, proceed to Question 6.

Question 5(b): If you found for Nick Cottier, state the amount of compensatory damages, or write \$1 to award nominal damages: _____.

If you found for Nick Cottier, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation:

Proceed to Question 6.

Question 6
NDN Collective's Discrimination Claim

Question 6(a): On plaintiff NDN Collective's claim of discrimination against Retsel Corporation, we find in favor of

_____ Plaintiff, NDN Collective _____ Defendant, Retsel Corporation

If you found in favor of NDN Collective, go to Question 6(b). If you did not find in favor of NDN collective, proceed to Question 7.

Question 6(b): If you found for NDN Collective, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

If you found for NDN Collective, and you decide to award punitive damages, state the amount of punitive damages, if any, awarded against Retsel Corporation: _____

Proceed to Question 7.

Question 7
Sunny Red Bear's Assault Claim

Question 7(a): Is Retsel Corporation liable for Connie Uhre's assault of Sunny Red Bear?

_____ Yes

_____ No

If you found that Retsel Corporation is liable for Connie Uhre's assault of Sunny Red Bear, go to Question 7(b). If you found that Retsel Corporation is not liable for Connie Uhre's assault of Sunny Red Bear, proceed to Question 8.

Question 7(b): State the amount of compensatory damages awarded to Sunny Red Bear: _____

Proceed to Question 8.

Question 8
Retsel Corporation's Defamation Claim

Question 8(a): On Retsel Corporation's claim of defamation against NDN Collective, we find in favor of

_____ Counterclaim Plaintiff, Retsel Corporation
_____ Counterclaim Defendant, NDN Collective

If you found in favor of Retsel Corporation, go to Question 8(b). If you did not find in favor of Retsel Corporation, proceed to Question 9.

Question 8(b): If you found for Retsel Corporation, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

Proceed to Question 9.

Question 9
Nicholas Uhre's Defamation Claim

Question 9(a): On Nicholas Uhre's claim of defamation against NDN Collective, we find in favor of

_____ Counterclaim Plaintiff, Nicholas Uhre
_____ Counterclaim Defendant, NDN Collective

If you found in favor of Nicholas Uhre, go to Question 9(b). If you did not find in favor of Nicholas Uhre, proceed to Question 10.

Question 9(b): If you found for Nicholas Uhre, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

Proceed to Question 10.

Question 10
Retsel Corporation's Nuisance Claim

Question 10(a): On Retsel Corporation's claim of nuisance against NDN Collective, we find in favor of

_____ Counterclaim Plaintiff, Retsel Corporation
_____ Counterclaim Defendant, NDN Collective

If you found in favor of Retsel Corporation, go to Question 10(b). If you did not find in favor of Retsel Corporation, sign and date the verdict form.

Question 10(b): If you found for Retsel Corporation, state the amount of compensatory damages, or write \$1 to award nominal damages:

_____.

Have your foreperson sign and date the verdict form below.

Dated this ____ of December, 2025

Foreperson.