

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MARY JANE BUCK; LOIS ERBSTEIN;  
DONALD AND LORRAINE SHIRK; and  
MAUREEN D. WILSON, Individually and  
as Trustee of the MAUREEN D. WILSON  
REVOCABLE TRUST,

Plaintiffs,

v.

THE RESERVE, A NONPROFIT  
CORPORATION d/b/a THE RESERVE ON  
WALNUT CREEK,

Defendant,

THE RESERVE, A NONPROFIT  
CORPORATION d/b/a THE RESERVE ON  
WALNUT CREEK,

Third-Party Plaintiff,

v.

S.X. CORPORATION d/b/a ESSEX  
CORPORATION,

Third-Party Defendant.

) Case No. CVCV052364

) **THE RESERVE’S SUPPLEMENTAL**  
) **PROPOSED JURY INSTRUCTIONS**  
) **AND REVISED VERDICT FORM**

COMES NOW Defendant/Third-Party Plaintiff The Reserve, a Nonprofit Corporation d/b/a The Reserve on Walnut Creek (“The Reserve”) and, based on the Court’s rulings and other developments during trial herein, respectfully submits its Supplemental Proposed Jury Instructions and Revised Verdict Form:

**INTRODUCTION**

The Reserve maintains that Plaintiffs’ Breach of Fiduciary Duties claim asserted in Count V of the Petition should not reach the jury for resolution. However, in light of the evidence presented by Plaintiffs, including over The Reserve’s objections, The Reserve submits the following additional requested instructions in the event that the breach of fiduciary duty claim is

submitted to the jury. The Reserve also retains its right to withdraw and/or object to any instructions or verdict questions that are not supported by the evidence presented at trial.

Date: June 6, 2018

/s/ William J. Miller

William J. Miller (AT0005414)

DORSEY & WHITNEY LLP

801 Grand Avenue, Suite 4100

Des Moines, IA 50309

Tel: (515) 283-1000

Fax: (515) 283-1060

E-mail: miller.william@dorsey.com

**ATTORNEYS FOR DEFENDANT /  
THIRD-PARTY PLAINTIFF**

Original filed.

**CERTIFICATE OF SERVICE**

Copy to:

The undersigned certifies that on June 6, 2018, the foregoing instrument was served upon all parties to the above case and/or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings:

Jason M. Craig  
Emily A. Kolbe  
Maria E. Brownell  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, IA 50309-2231  
ATTORNEYS FOR PLAINTIFFS

By: Electronic Filing and/or  
\_\_\_\_\_ U.S. Mail \_\_\_\_\_ FAX  
\_\_\_\_\_ Hand Delivered \_\_\_\_\_ Overnight Courier  
\_\_\_\_\_ X E-mail \_\_\_\_\_ Other \_\_\_\_\_

/s/ William J. Miller

Mitchell R. Kunert  
Nyemaster Goode, P.C.  
700 Walnut Street, Suite 1600  
Des Moines, IA 50309  
ATTORNEYS FOR THIRD-PARTY  
DEFENDANT

**The Reserve's Proposed Instruction No. 23**

**Senior Congregate Living Facilities – Definition**

The Reserve is a senior adult congregate living facility as defined under Iowa law. A senior adult congregate living facility means a facility which provides housing and one or more supportive services furnished to a resident, with or without other periodic charges, in consideration of an entrance fee. The amounts of the entrance fees, supplemental amounts, or monthly charges paid by Plaintiffs are not in issue in this case.

Authority: Iowa Code § 523D.2; Iowa Code § 523D.1(2); Iowa Code § 523D.1(4); Iowa Code § 523D.1(11).

**The Reserve's Proposed Instruction No. 24**

**Senior Congregate Living Facilities – Required Disclosures**

As a senior adult congregate living facility, the content of The Reserve's contractual documents and disclosure statement is directed by Iowa statutes. The Iowa statutes applicable to The Reserve's contractual documents and the disclosure statement do not include a requirement that The Reserve describe any independent business arrangement that it may enter into regarding leasing units or how it will administer units owned The Reserve.

Authority: Iowa Code §§ 523D.3, .6.

**The Reserve's Proposed Instruction No. 25**

**Breach of Fiduciary Duty – Time Limit**

In determining whether The Reserve breached a fiduciary duty to each Plaintiff, you are only allowed to consider actions by The Reserve that occurred on or after July 20, 2011.

Authority: Iowa Code § 614.1(4); *Shams v. Hassan*, 905 N.W.2d 158, 164 (Iowa 2017).

**The Reserve's Proposed Instruction No. 26**

**Breach of Fiduciary Duty – Relevant Evidence**

You have heard evidence presented by Plaintiffs, objections by the attorneys, and rulings by the Court regarding a claim of unconscionability that has been asserted by Plaintiffs. However, you only will be deciding whether The Reserve breached a fiduciary duty to each Plaintiff.

The law requires that I decide the unconscionability claim that has been asserted by the Plaintiffs. Accordingly, in reaching your decision on breach of fiduciary duty, you must disregard any evidence presented by Plaintiffs regarding a claim of unconscionability.

Authority: *Fields v. NCR Corp.*, 683 F. Supp. 2d 980, 985 (S.D. Iowa 2010)

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Defendant,

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S.X. CORPORATION d/b/a ESSEX  
CORPORATION,

Third-Party Defendant.

) Case No. CVCV052364

) **REVISED VERDICT FORM**

We, the jury, duly empaneled in the above-entitled action and sworn to try the issues therein, answer this Verdict Form as follows:

**I. MARY JANE BUCK**

1. Did Mary Jane Buck prove by a preponderance of the evidence that The Reserve was in a fiduciary relationship with her?

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

If you answered Question No. 1 as “Yes,” then proceed to Question No. 2.

If you answered Question No. 1 as “No,” then skip Question Nos. 2 and 3 and proceed to Question No. 4.

2. Did Mary Jane Buck prove by a preponderance of the evidence that The Reserve breached a fiduciary duty owed to her?

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

If you answered Question No. 2 as “Yes,” then proceed to Question No. 3.

If you answered Question No. 2 as “No,” then skip Question No. 3 and proceed to Question No. 4.

3. Did Mary Jane Buck prove by a preponderance of the evidence that The Reserve was the cause of any damages to her?

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

If you answered Question No. 3 as “Yes,” then enter the amount of damages (if any) that were proven by a preponderance of the evidence submitted by Mary Jane Buck in the space below and proceed to Question No. 4. If you find that Mary Jane Buck failed to mitigate any damages she has proven, you must reduce the amount of the damages awarded in the space below by the amount of damages that Mary Jane Buck could have prevented. If no amount of damages was proven, enter \$0.00 in the space provided below and proceed to Question No. 4.

\$ \_\_\_\_\_

If you answered Question No. 3 as “No,” then proceed to Question No. 4.

## **II. LOIS ERBSTEIN**

4. Did Lois Erbstein prove by a preponderance of the evidence that The Reserve was in a fiduciary relationship with her?

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

If you answered Question No. 4 as “Yes,” then proceed to Question No. 5.

If you answered Question No. 4 as “No,” then skip Question Nos. 5 and 6 and proceed to Question No. 7.

5. Did Lois Erbstein prove by a preponderance of the evidence that The Reserve breached a fiduciary duty owed to her?

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

If you answered Question No. 5 as “Yes,” then proceed to Question No. 6.

If you answered Question No. 5 as “No,” then skip Question No. 6 and proceed to Question No. 7.



6. Did Lois Erbstein prove by a preponderance of the evidence that The Reserve was the cause of any damages to her?

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

If you answered Question No. 6 as “Yes,” then enter the amount of damages (if any) that were proven by a preponderance of the evidence submitted by Lois Erbstein in the space below and proceed to Question No. 7. If you find that Lois Erbstein failed to mitigate any damages she has proven, you must reduce the amount of the damages awarded in the space below by the amount of damages that Lois Erbstein could have prevented. If no amount of damages was proven, enter \$0.00 in the space provided below and proceed to Question No. 7.

\$ \_\_\_\_\_

If you answered Question No. 6 as “No,” then proceed to Question No. 7.

### **III. LORRAINE SHIRK**

7. Did Lorraine Shirk prove by a preponderance of the evidence that The Reserve was in a fiduciary relationship with her?

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

If you answered Question No. 7 as “Yes,” then proceed to Question No. 8.

If you answered Question No. 7 as “No,” then skip Question Nos. 8 and 9 and proceed to Question No. 10.

8. Did Lorraine Shirk prove by a preponderance of the evidence that The Reserve breached a fiduciary duty owed to her?

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

If you answered Question No. 8 as “Yes,” then proceed to Question No. 9.

If you answered Question No. 8 as “No,” then skip Question No. 9 and proceed to Question No. 10.

9. Did Lorraine Shirk prove by a preponderance of the evidence that The Reserve was the cause of any damages to her?

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

If you answered Question No. 9 as “Yes,” then enter the amount of damages (if any) that were proven by a preponderance of the evidence submitted by Lorraine Shirk in the space below and proceed to Question No. 10. If you find that Lorraine Shirk failed to mitigate any damages

she has proven, you must reduce the amount of the damages awarded in the space below by the amount of damages that Lorraine Shirk could have prevented. If no amount of damages was proven, enter \$0.00 in the space provided below and proceed to Question No. 10.

\$ \_\_\_\_\_

If you answered Question No. 9 as “No,” then proceed to Question No. 10.

#### **IV. MAUREEN WILSON**

10. Did Maureen Wilson prove by a preponderance of the evidence that The Reserve was in a fiduciary relationship with her?

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

If you answered Question No. 10 as “Yes,” then proceed to Question No. 11.

If you answered Question No. 10 as “No,” please sign below and alert the court attendant that you have completed this form.

11. Did Maureen Wilson prove by a preponderance of the evidence that The Reserve breached a fiduciary duty owed to her?

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

If you answered Question No. 11 as “Yes,” then proceed to Question No. 12.

If you answered Question No. 11 as “No,” please sign below and alert the court attendant that you have completed this form.

12. Did Maureen Wilson prove by a preponderance of the evidence that The Reserve was the cause of any damages to her?

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

If you answered Question No. 12 as “Yes,” then enter the amount of damages (if any) that were proven by a preponderance of the evidence submitted by Maureen Wilson in the space below and then please sign below and alert the court attendant that you have completed this form. If you find that Maureen Wilson failed to mitigate any damages she has proven, you must reduce the amount of the damages awarded in the space below by the amount of damages that Maureen Wilson could have prevented. If no amount of damages was proven, enter \$0.00 in the space provided below and then please sign below and alert the court attendant that you have completed this form.

\$ \_\_\_\_\_

If you answered Question No. 12 as “No,” then please sign below and alert the court attendant that you have completed this form.

**You may now sign and date this form in accordance with the previous instructions because you have completed your deliberation.**

Foreperson: \_\_\_\_\_

**\*TO BE SIGNED BY THE FOREPERSON ONLY IF THE VERDICT IS UNANIMOUS**

Dated: \_\_\_\_\_

OR

\_\_\_\_\_  
Juror \*\*

\_\_\_\_\_  
Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

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Juror \*\*

\_\_\_\_\_  
Juror \*\*

**\*\* To be signed by the jurors agreeing to the verdict after six hours or more of deliberation.**