

IN THE IOWA DISTRICT COURT FOR PALO ALTO COUNTY

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KATHLEEN BROWNELL,	)	
Plaintiff	)	CASE NO. LACV025469
	)	
v.	)	
	)	
SCOTT JOHNSON and THE JOHNSON	)	DEFENDANTS' PROPOSED
FARM ACCOUNT TRUST,	)	JURY INSTRUCTIONS
Defendants.	)	

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COME NOW the Defendants, Scott Johnson and The Johnson Farm Account Trust and for their proposed Jury Instructions submit the following, subject to amendment to conform to the evidence at the time of trial:

**INSTRUCTION NO. 1**

**100.1 Statement of The Case.**

Members of the Jury:

In this case Kathleen Brownell claims Scott Johnson and Johnson Farm Account Trust improperly interfered with her alimony payments.

Scott Johnson and Johnson Farm Account Trust deny any improper interference.

Scott Johnson and Johnson Farm Account Trust claim that Kathleen Brownell has improperly interfered with the operation of Johnson Farm Account Trust and has abused the legal process by commencing this case.

Kathleen Brownell denies any improper interference with the Trust and denies that she has abused the legal process by bring this case.

Kathleen Brownell may be referred to as the Plaintiff and/or the Counter Claim Defendant.

Scott Johnson may be referred to as the Defendant and/or the Counter Claim Plaintiff.

Johnson Farm Account Trust may be referred to as the Defendant and/or Counter Claim Plaintiff.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

**INSTRUCTION NO. 2**

**100.2 Duties of Judge and Jury, Instructions as Whole.**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Authority:

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

**INSTRUCTION NO. 3**

**100.3 Burden of Proof, Preponderance of Evidence.**

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence.

Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

**INSTRUCTION NO. 4**

**100.4 Evidence.**

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.

3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

#### **INSTRUCTION NO. 5**

##### **100.5 Deposition Testimony.**

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Authority Iowa R. Civ. P. 1.704 Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

#### **INSTRUCTION NO. 6**

##### **100.6 Interrogatories.**

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked 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.

Authority Iowa R. Civ. P. 1.509

#### **INSTRUCTION NO. 7**

##### **100.9 Credibility of Witnesses.**

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)  
East Court Avenue, Des Moines, IA 50309-1904

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

**100.20 Trust as Party.** The fact that a plaintiff or defendant is a Trust should not affect your decision. All persons are equal before the law, and trusts, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Comment Based on Jury instruction 100.20

#### **INSTRUCTION NO. 9**

##### **Duty of loyalty-Impartiality.**

A trustee shall administer the trust solely in the interest of the beneficiaries and shall act with due regard to their respective interests.

Authority Iowa Code 633A.4202

#### **INSTRUCTION NO. 10**

##### **633A.4503. Breach of trust—liability**

A beneficiary may charge a trustee who commits a breach of trust with the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, or, if greater, the amount of profit lost by reason of the breach.

Iowa Code Ann. § 633A.4503 (West)

**INSTRUCTION NO. 11**

**633B.114 Agent's Duties.**

A power of attorney shall act in conformity with the principal's reasonable expectations to the extent known to the agent. The power of attorney shall attempt to preserve the principal's estate plan to the extent actually known by the agent including the principal's eligibility for a benefit, program or assistance under statute or regulation.

**INSTRUCTION NO. 12**

**1200.1 Intentional Interference with Contract - Essentials for Recovery.**

Kathleen Brownell must prove all of the following propositions:

1. That she had a contract with Phillip Johnson.
2. The defendant knew of the contract.
3. The defendant intentionally and improperly interfered with the contract by not paying her alimony owed by Phillip Johnson.
4. The interference caused Phillip Johnson not to perform the contract;
5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

**Authority**

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751 (Iowa 1999)

Financial Marketing Services, Inc., v. Hawkeye Bank, 588 N.W.2d 450 (Iowa 1999)

Nesler v. Fisher and Company, Inc., 452 N.W.2d 191 (Iowa 1990)

Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986)

**INSTRUCTION NO. 13**

**1200.1 Intentional Interference with Contract - Essentials for Recovery.**

Scott Johnson or Johnson Farm Account Trust must prove all of the following propositions:

1. That there was a contract with Phillip Johnson.
2. The Counter Claim Defendant knew of the contract.
3. The Counter Claim Defendant intentionally and improperly interfered with the contract by filing this lawsuit against the Counter Claim Plaintiffs.
4. The interference caused the cost of complying with the duties of Scott Johnson as Power of Attorney and or Trustee and the duties of the Johnson Farm Account Trust to be more expensive.
5. The nature and amount of damage.

If the plaintiff has failed to prove any one or more of these propositions, the plaintiff is not entitled

to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Authority

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751 (Iowa 1999)

#### **INSTRUCTION NO. 14**

##### **1200.3 Interference with Contract - Definition of Contract.**

A contract is an agreement between two or more persons to do or not to do something.

Authority

Compiano v. Kuntz, 226 N.W.2d 245 (Iowa 1975)

Restatement (Second) of Torts, Section 766, comment f

Comment

#### **INSTRUCTION NO. 15**

##### **1200.4 Interference with Contract - Knowledge.**

The defendant “knew” of the contract if the defendant either had actual knowledge of the contract or else had knowledge of facts which, if followed by reasonable inquiry, would have led to disclosure of the contract between (names of parties).

Authority

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751, 764 (Iowa 1999)

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

##### **1200.6 Intentional Interference.**

A defendant's interference with a contract is intentional if the defendant either interferes with the contract prospective business on purpose or knows the conduct is substantially certain to interfere with the contract.

Authority

Restatement (Second) of Torts, Section 766, comment j.

#### **INSTRUCTION NO. 17**

##### **1200.5 Interference with Contract - Improper.**

In determining whether a defendant's conduct in intentionally interfering with a contract is improper you should determine whether the conduct was fair and reasonable under the circumstances. In determining whether the conduct was improper you may consider:

1. The nature of the conduct.
2. The defendant's motive.
3. The interests of the party with which the conduct interferes.
4. The interest sought to be advanced by the defendant.
5. The social interests in protecting the freedom of action of the defendant and the contractual interests of the other party.
6. The nearness or remoteness of the defendant's conduct to the interference.
7. The relations between the parties.

However, conduct is generally not improper if it was merely a consequence of actions taken for a purpose other than to interfere with a contract. *Berger*, 543 N.W.2d at 599 (quoting Restatement (Second) of Contracts § 767 cmt. A party does not improperly interfere with another's contract by exercising its own legal rights in protection of its own financial interests." (citing *Wilkin Elevator v. Bennett State Bank*, 522 N.W.2d 57, 62 (Iowa 1994)). Also see *Green v. RACI* 713 NW2d 234 (Iowa 2006).

For you to establish improper interference, a showing is required that the Scott Johnson's or Johnson Farm Account Trust's predominant purpose was to injure Kathleen Brownell. *Nesler v. Fisher & Co.*, 452 N.W.2d 191, 199 (Iowa 1990)

Authority

*Toney v. Casey's General Stores, Inc.*, 460 N.W.2d 849 (Iowa 1990)

*Nesler v. Fisher and Company, Inc.*, 452 N.W.2d 191 (Iowa 1990)

**INSTRUCTION NO. 18**

**220.1 Damages Intentional and Improper Interference with Contract.**

The measure of damages for intentional and improper interference with contract is an amount that would place the party in as good a position as they would have enjoyed if the contract had been performed.

The damages you award for intentional and improper interference with contract must be foreseeable or have been reasonably foreseen at the time the intentional and improper interference occurred.

In your consideration of the damages, you may consider the following:

Damages claimed by Brownell, reasonable Attorney's fees and Court Costs.

Damages claimed by Scott Johnson, reasonable Attorney's fees and Court Costs.

Damages claimed by Johnson Farm Account Trust, reasonable Attorney's fees and Court Costs.

Authority

*Yost v. City of Council Bluffs*, 471 N.W. 2nd 836 (Iowa 1991)

*Air Host Cedar Rapids v. Airport Commission*, 464 N.W. 2nd 450 (Iowa 1990)

Hoffman v. National Medical Enterprises, Inc., 442 N.W. 2nd 123 (Iowa 1989)  
Potter v. Oster, 426 N.W. 2nd 148 (Iowa 1988)  
Ritam Corporation v. Applied Concepts, Inc., 387 N.W. 2nd 619 (Iowa App. 1986)

## **INSTRUCTION NO. 19**

### **1800.1 Abuse of Process - Essentials for Recovery.**

The Counter Claim plaintiff must prove all of the following propositions:

1. On or about the day Kathleen Brownell filed the petition in the case, she intentionally used the court law suit against Scott Johnson and Johnson Farm Account Trust.
2. The counter claim defendant (Brownell) used the legal process primarily to collect alimony owed her by Phillip Johnson and against parties that are mere legal bystanders, when she had knowingly and intentionally waived her right to any of the value or assets of the Johnson Farm Account Trust and not for its intended use which is explained in Instruction No. \_\_\_\_.
3. The defendant's use of the legal process for the improper purpose was a cause of the Counter claim plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

#### **Authority**

Grell v. Poulsen, 389 N.W.2d 661 (Iowa 1986)  
Restatement of Torts (Second), Section 682  
Thompson v. Kaczinski, 774 N.W. 2d 829, 836-39 (Iowa 2009) (causation)  
Rev. 09/10

## **INSTRUCTION NO. 20**

### **1800.2 Abuse of Process - Definition.**

Abuse of process is the use of a civil legal process against another primarily to accomplish a purpose for which it was not designed. A person who abuses a legal process is responsible for damages suffered by another as a result of the abuse.

## **INSTRUCTION NO. 21**

### **1800.3 Abuse of Process - Explanation of The Misconduct.**

The wrong act involved in "abuse of process" is using the process for a reason different from the purpose for which the process was designed. For example, it could be using a legal process to force



another to take some action or not take some action unrelated to the legal process. The result of the earlier legal proceeding does not matter.

The purpose of the civil legal process in Brownell's instance is to enforce a judgment she has against Phillip Johnson.

#### **INSTRUCTION NO. 22**

##### **1800.4 Abuse of Process - Intent.**

The word "intentionally", as used in element number 1 of Instruction No. \_\_\_\_\_, refers to the state of mind of the defendant and means that a person acted voluntarily, not mistakenly, or through accident, inadvertence, ignorance, or other innocent reason. Intent may be determined by such reasonable conclusions and deductions as may be drawn from the facts proved, in accordance with common experience and observation. In determining the intent of any person, you may, but are not required to, conclude that they intended the consequences of their acts.

#### **INSTRUCTION NO. 23**

##### **1800.5 Abuse of Process - Primarily.**

The word "primarily" as used in these instructions means that the wrongful purpose must have been the main reason for using the process. If the process is used for its intended purpose, it makes no difference if the defendant dislikes the plaintiff or if the defendant's motives in using the process were improper.

Authority

Grell v. Poulsen, 389 N.W.2d 661 (Iowa 1986)

Restatement of Torts (Second), Section 682, Comment (b)

#### **INSTRUCTION NO. 24**

##### **Damages, Abuse of Legal Process**

The measure of damages for Abuse of Legal Process are:

1. The harm to reputation;
2. The expense of defending the proceedings;
3. Any loss that has resulted from the proceedings, and
4. Any emotional distress caused by the proceedings.

Authority: Restatement of Torts 2d § 681 Damages

When the essential elements of a cause of action for wrongful civil proceedings have been established, the plaintiff is entitled to recover for

(a) the harm normally resulting from any arrest or imprisonment, or any dispossession or interference with the advantageous use of his land, chattels or other things, suffered by him during the course of the proceedings, and

(b) the harm to his reputation by any defamatory matter alleged as the basis of the proceedings, and

(c) the expense that he has reasonably incurred in defending himself against the proceedings, and

(d) any specific pecuniary loss that has resulted from the proceedings, and

(e) any emotional distress that is caused by the proceedings.

Restatement (Second) of Torts § 681 (1977)

## **INSTRUCTION NO. 25**

### **100.21 Cautionary Instruction - Juror's Notes.**

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Authority

Iowa R. Civ. P. 1.926 (1)

## **INSTRUCTION NO. 26**

### **100.23 Use of Electronic Devices.**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case 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. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have

this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

**INSTRUCTION NO. 27**

**100.18 General Instruction to Jury.**

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

**INSTRUCTION NO. 28**

**300.1 Return of Verdict - Forms of Verdict.**

I am giving you 3 forms of verdict. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman. After deliberating for six hours from \_\_\_\_ o'clock \_\_.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the Court Attendant.

**INSTRUCTION NO. 29**

**300.2 Single Plaintiff - Single Defendant Modified - Cases Not Governed by Chapter 668**

**VERDICT NO. 1 – INTENTIONAL INTERFERENCE WITH CONTRACT**

Kathleen Brownell, Plaintiff, Claim of Intentional and Improper Interference with Contract.

1. Do you find for Kathleen Brownell and against Johnson Farm Account Trust, circle yes or no. If yes what is the amount of recovery. \_\_\_\_\_. If no, do not enter any recovery on this line.
2. Do you find for Kathleen Brownell and against Scott Johnson, circle yes or no. If yes what is the amount of recovery. \_\_\_\_\_. If no, do not enter any recovery on this line.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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

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

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

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

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

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

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

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

**INSTRUCTION NO. 30**

**300.2 Single Plaintiff - Single Defendant Modified - Cases Not Governed by Chapter 668**

**VERDICT NO. 2 – INTENTIONAL INTERFERENCE WITH CONTRACT**

Scott Johnson and Johnson Farm Account Trust Counter Claim Plaintiffs and Kathleen Brownell, Counter Claim Defendant, Claim of Intentional and Improper Interference with Contract.

1. Do you find for Scott Johnson and against Kathleen Brownell, circle yes or no. If yes what is the amount of recovery. \_\_\_\_\_. If no, do not enter any recovery on this line.
2. Do you find for Johnson Farm Account Trust and against Kathleen Brownell, circle yes or no. If yes what is the amount of recovery. \_\_\_\_\_. If no, do not enter any recovery.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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

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

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

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

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

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

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

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

### INSTRUCTION NO. 31

#### VERDICT NO. 3 – ABUSE OF LEGAL PROCESS

Scott Johnson and Johnson Farm Account Trust Counter Claim Plaintiffs and Kathleen Brownell, Counter Claim Defendant, Claim of Abuse of Legal Process.

1. Do you find for Scott Johnson and against Kathleen Brownell, circle yes or no. If yes what is the amount of recovery for:
  - a. The harm to reputation, \_\_\_\_\_
  - b. The expense of defending the proceedings \_\_\_\_\_
  - c. Any loss that has resulted from the proceedings \_\_\_\_\_
  - d. Any emotional distress caused by the proceedings \_\_\_\_\_.

If no, do not enter any recovery.

2. Do you find for Johnson Farm Account Trust and against Kathleen Brownell, circle yes or no. If yes what is the amount of recovery for:
  - a. The expenses of defending the proceedings. \_\_\_\_\_
  - b. Any loss that has resulted from the proceedings. \_\_\_\_\_

If no, do not enter any recovery.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

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

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

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Juror\*\*

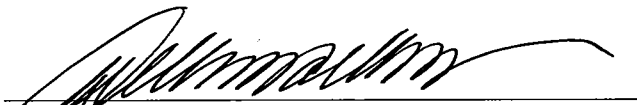
\_\_\_\_\_  
Juror\*\*

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

Respectfully submitted,

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Original filed.  
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