

NO. 18-CI-7456

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
JUDGE MITCH PERRY

JENNIFER SAINATO

PLAINTIFFS

VS.

NIKOLA JAJIC;  
MARRIOTT INTERNATIONAL, INC;  
WHITE LODGING SERVICES CORP;  
and RLJ LODGING TRUST

DEFENDANTS

**JURY INSTRUCTIONS**

\* \* \* \* \*

- (A) Immediately upon retiring to the jury room you shall select one person to serve as foreperson of the jury.
- (B) To make an answer to any question, nine or more jurors must agree. The nine or more who agree on one determination, however, need not be the same jurors who agree on separate determinations. If all twelve jurors agree upon an answer, that answer must be signed only by the foreperson. If nine or more, but less than all jurors agree on any answer, then that answer must be signed by those jurors who agree upon the answer. When you have completed your answers as directed, notify the Bailiff that you are ready to return to the courtroom.

## DEFINITIONS

“Dram Shop” refers to a place where alcoholic beverages are sold.

“Fraud” means an intentional misrepresentation, deceit, or concealment of material fact known to the Defendants and made with the intention of causing injury to Ms. Sainato.

“Intentional” A person acts intentionally with respect to a result or to conduct when his conscious objective is to cause that result or to engage in that conduct.

“Gross Negligence” means a wanton or reckless disregard for the rights, lives, safety, or property of others.

“Malice” means (a) conduct that was specifically intended by the Defendants to cause tangible or intangible injury to Ms. Sainato OR (b) conduct that was carried out by the Defendants with both flagrant indifference to Ms. Sainato’s care and a subjective awareness that such conduct would result in human death or bodily harm.

“Mentally Incapacitated” means that a person is rendered temporarily incapable of appraising her conduct as a result of the influence of a controlled or intoxicating substance administered to her without her consent, or administered with her consent in a hospital or other medical care facility. The phrase ‘incapable of appraising her conduct’ means that a person does not know that a sexual act will be performed.

“Oppression” means conduct that was specifically intended by the Defendants to subject Ms. Sainato to cruel and unjust hardship.

“Ordinary Care” means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances.

“Physically Helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

“Reckless” A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

PLEASE PROCEED TO INSTRUCTION NO. 1

**INSTRUCTION NO. 1 – MS. SAINATO’S CLAIM FOR CIVIL BATTERY**

Plaintiff Ms. Sainato has brought a claim of Civil Battery against the Defendant, Mr.

Jajic. You will find for the Plaintiff if you are satisfied from the evidence:

a. That Mr. Jajic subjected Ms. Sainato to sexual contact without her consent;

OR

b. That Mr. Jajic subjected Ms. Sainato to sexual contact when she was incapable of consent because she was either mentally incapacitated or physically helpless, of which Mr. Jajic was, or should have been aware;

Otherwise, you will find for the Defendant, Mr. Jajic.

PLEASE PROCEED TO VERDICT FORM NO. 1

**VERDICT FORM NO. 1 – MS. SAINATO'S CLAIM OF CIVIL BATTERY**

Do you believe from the evidence that Mr. Jajic subjected Ms. Sainato to sexual contact without her consent?

YES

Or

NO

(Please Circle One)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Suzanne Peterson

[Signature]

Cherise Matthews

Barbara Ebelich

Dana Elkin

Rivian Bey

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

PLEASE PROCEED TO INSTRUCTION NO. 2

**INSTRUCTION NO. 2 – MS. SAINATO’S CLAIM FOR INTENTIONAL INFLECTION  
OF EMOTIONAL DISTRESS**

The Plaintiff, Ms. Sainato, has brought a claim for Intentional Inflection of Emotional Distress against the Defendant, Mr. Jajic. You will find for Ms. Sainato if you are satisfied from the evidence as follows:

- a. That by subjecting Ms. Sainato to non-consensual sexual contact, Mr. Jajic he either intended to cause her emotional distress, or if he did not actually so intend, nevertheless knew or had reason to know that such distress would result but did not care whether it did or not;
  - b. That such conduct did in fact cause Ms. Sainato to suffer severe emotional distress;
- AND
- c. That such conduct by Mr. Jajic clearly exceeded the bounds of common decency as would be observed in any civilized community.

Otherwise, you will find for the Defendant, Mr. Jajic.

PLEASE PROCEED TO VERDICT FORM NO. 2

**VERDICT FORM NO. 2 – MS. SAINATO’S CLAIM OF INTENTIONAL  
INFLICTION OF EMOTIONAL DISTRESS**

Do you believe from the evidence that Mr. Jajic’s conduct clearly exceeded the bounds of common decency, and if so did he intentionally or recklessly cause severe emotional distress to Ms. Sainato?

YES

Or

NO

(Please Circle One)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

*Suzanne Igwe*  
*John Clark*  
*Janice*  
*Janice*  
*Wm Be*  
*Dave*

*Barbara Ehrlich*  
*Cherise Matthews*  
*David*  
\_\_\_\_\_  
\_\_\_\_\_

IF YES, PLEASE PROCEED TO INSTRUCTION NO. 3

IF YOU ANSWERED “NO” TO BOTH INSTRUCTIONS NO. 1 & 2, PLEASE RETURN TO THE COURTROOM YOUR WORK IS COMPLETE.

**INSTRUCTION NO. 3 – APPORTIONMENT OF FAULT**

If you find for the Plaintiff, Ms. Sainato, under either Instructions No. 1 or 2, you will determine from the evidence and indicate in the blank spaces below what percentage of the total fault was attributable to the failure of each Ms. Sainato and Mr. Jajic to comply with their respective duty of ordinary care, as defined in the definitions. You may place any number on the line for each party from 0 to 100 provided that the total of all lines is not greater than 100%.

Jennifer Sainato 45 %

Nikola Jajic 55 %

Total: 100%

FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Suzanne Peterson  
BTB  
Debra Matthews  
Barbara Ehrlich  
Dana Chin  
Robert M. Ben

Ami M.  
Kathleen Weichel  
EA  
Paul M.

PLEASE PROCEED TO INSTRUCTION NO. 4



**INSTRUCTION NO. 4 - DAMAGES FOR INTENTIONAL TORTS BY MR. JAJIC**

If you found for Ms. Sainato under either Instructions No. 1 or 2, you will determine from the evidence and award Ms. Sainato a sum of money that will fairly and reasonably compensate her for whatever physical or mental suffer and injury to her person you believe from the evidence she sustained by reason of the sexual contact with Mr. Jajic. We the jury, based upon the evidence, hereby award Ms. Sainato the following damages:

Medical Expenses:	\$ <u>40,000</u> (Not to exceed 75,000)
Pain and Suffering:	\$ <u>596,000</u> (Not to exceed 5,000,000)
Loss of Future Earnings:	\$ <u>292,000</u> (Not to exceed 500,000)
Lost Wages:	\$ <u>193,000</u> (Not to exceed 480,000)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Anganna Peterson  
B. D.  
Cherise Matthews  
Barbara Ehrlich  
Dana Elji  
Kathleen Weichel

Rebecca M. Bay  
Carla H.  
Walter  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE PROCEED TO INSTRUCTION NO. 5

### **INSTRUCTION NO. 5 – JAJIC PUNITIVE DAMAGES**

If you find for the Plaintiff under Instructions No. 1 or 2, and if you are further satisfied by clear and convincing evidence that Mr. Jajic acted toward Ms. Sainato with fraud, oppression, malice, or gross negligence, you may in your discretion award punitive damages against him in addition to the damages awarded under Instruction No. 4.

Punitive damages are damages awarded against Mr. Jajic for the purpose of punishing him for his misconduct in this case and deterring him and others from engaging in similar conduct in the future. Whether you make an award of punitive damages, in addition to the compensatory damages previously awarded, is a matter exclusively within your discretion. If, however, you award punitive damages, in determining the amount thereof, you should consider the following factors:

- a. The likelihood at the time of such misconduct by Mr. Jajic that serious harm would arise from it;
- b. The degree of Mr. Jajic's awareness of that likelihood;
- c. The profitability of the misconduct to Mr. Jajic;
- d. The duration of the misconduct by Mr. Jajic; and
- e. Any actions by Mr. Jajic to remedy the misconduct once it became known to him.

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, bias, or prejudice with respect to any party to the case.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 4.

PLEASE PROCEED TO INSTRUCTION NO. 6

**INSTRUCTION NO. 6 – JAJIC PUNITIVE DAMAGES AWARD**

If you believe from the evidence presented that Mr. Jajic acted towards Ms. Sainato with oppression, fraud, malice, or gross negligence, you may in your discretion award her a sum of punitive damages that will adequately punish Mr. Jajic for his conduct. We the jury, award Ms. Sainato the amount of punitive damages as follows:

Punitive Damages:

\$ 50,000  
(Not to exceed 10,000,000)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Suzanne Peterson  
Charlene Matthews  
Bosana Ehrlich  
Dana Klein  
Fathen Wickel  
Rebecca

J. Dore  
Janice  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE PROCEED TO INSTRUCTION NO. 7

**INSTRUCTION NO. 7 – MS. SAINATO’S DRAM SHOP CLAIM**

“Dram Shop” is defined as a place where alcoholic beverages are sold. The consumption of intoxicating beverages, rather than the serving, furnishing, or sale of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or another person, unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.

**PLEASE PROCEED TO VERDICT FORM NO. 3**

**VERDICT FORM NO. 3 – MS. SAINATO’S DRAM SHOP CLAIM**

Based on the evidence presented, would a reasonable person under the same or similar circumstances as the employees of the Marriott Defendants know or should have known that Ms. Sainato or Mr. Jajic were intoxicated when either were served alcoholic beverages?

YES

OR

NO

(Please circle one)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Suzanne Peterson  
Cherise Matthews  
Barbara E. Kirk  
Hattie Weick  
Belinda  
J. Gann

[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

IF YOU ANSWERED YES, PLEASE PROCEED TO INSTRUCTION NO. 8

IF YOU ANSWERED NO, PLEASE RETURN TO THE COURTROOM YOUR WORK IS COMPLETE.

**INSTRUCTION NO. 8 – DRAM SHOP DAMAGES**

If you found for Ms. Sainato under Instruction No. 7, you will determine from the evidence and award her a sum of money that will fairly and reasonably compensate her for the injuries she sustained as a result of the actions of the Marriott Defendants, by and through its employees. We the jury award Ms. Sainato the following damages:

Medical Expenses:	\$ _____ (Not to exceed 75,000)
Pain and Suffering:	\$ _____ (Not to exceed 5,000,000)
Loss of Future Earnings:	\$ _____ (Not to exceed 500,000)
Lost Wages:	\$ _____ (Not to exceed 480,000)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____

PLEASE PROCEED TO INSTRUCTION NO. 9

**INSTRUCTION NO. 9 – HOTEL PUNITIVE DAMAGES**

If you find for the Plaintiff under Instruction No. 7, and if you are further satisfied by clear and convincing evidence that the Marriott Defendants, by and through their employees, acted toward Ms. Sainato with fraud, oppression, malice, or gross negligence, you may in your discretion award punitive damages against them in addition to the damages awarded under Instruction No. 8.

Punitive damages are damages awarded against the Marriott Defendants for the purpose of punishing them for their misconduct in this case and deterring them and others from engaging in similar conduct in the future. Whether you make an award of punitive damages, in addition to the compensatory damages previously awarded, is a matter exclusively within your discretion. If, however, you award punitive damages, in determining the amount thereof, you should consider the following factors:

- a. The likelihood at the time of such misconduct by them that serious harm would arise from it;
- b. The degree of their awareness of that likelihood;
- c. The profitability of the misconduct to them;
- d. The duration of the misconduct by them; and
- e. Any actions by them to remedy the misconduct once it became known to them.

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, bias, or prejudice with respect to any party to the case. If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. <sup>10.</sup>~~8.~~

PLEASE PROCEED TO INSTRUCTION NO. 10

**INSTRUCTION NO. 10 – HOTEL PUNITIVE DAMAGES AWARD**

If you believe from the evidence presented that the Marriott Defendants, by and through their employees, acted towards Ms. Sainato with oppression, fraud, malice, or gross negligence, you may in your discretion award her a sum of punitive damages that will adequately punish them for their conduct. We the jury, award Ms. Sainato the amount of punitive damages as follows:


Punitive Damages:

\$ \_\_\_\_\_  
(Not to exceed 10,000,000)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

  
\_\_\_\_\_  
HON. MITCH PERRY, JUDGE  
1-25-23  
\_\_\_\_\_  
DATE

PLEASE RETURN TO THE COURTROOM, YOUR WORK IS COMPLETE.