

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

**JERI MAGUIRE**

**v.**

**FRANK CUSHMAN**

**DOCKET NO. PLAY-1N-26**

**JURY INSTRUCTIONS**

1. It is your job to determine the facts from the evidence and then apply the law to the facts. You should not consider sympathy in your deliberations. You should, however, consider your common sense and your own life experiences in your deliberations.
2. Evidence is witness testimony and exhibits admitted by the Court. Do not consider testimony and exhibits the Court refused or struck or evidence or testimony received for a limited purpose for any other purpose. Treat stipulated facts as having been proven.
3. You should consider direct evidence, meaning what a witness personally saw, heard, or did, and circumstantial evidence, meaning a fact that creates an inference that another fact exists. You should weigh direct evidence and circumstantial evidence equally.
4. You must determine the weight to give to a witness's testimony. To do so, you may consider their ability to observe, their memory, their manner while testifying, whether they have made inconsistent statements, their biases, or any other factors bearing on their credibility.
5. The Plaintiff has the burden to prove, by a preponderance of the evidence, meaning more likely than not, that the Defendant breached his contract with the Plaintiff, meaning the Plaintiff must prove 1) the existence of a contract; and 2) the Defendant breached a duty created by the contract. A contract does not need to be written.
6. To prove the parties entered into a legally enforceable contract, the Plaintiff must prove there was 1) an offer; 2) the Defendant accepted the offer; and 3) there was consideration.
7. The Plaintiff must also prove that the Defendant gave Matty Cushman express authority to enter into a contract on his behalf. Express authority exists where the principal deliberately and specifically grants authority to the agent as to certain matters.
8. An "offer" is a proposal indicating a willingness to enter into a contract, which, under the circumstances, the other party should reasonably understand will create a contract upon acceptance. To be a valid offer, the terms must be clear and definite enough so that the parties understand what each party will be required to do under the contract.
9. An offer is "accepted" by a clear indication by word or conduct that one agrees to be bound by every term of the offer without any changes.
10. "Consideration" means each party must intend to exchange something of value. Consideration does not have to be money. Consideration may be a promise to do something.
11. In determining if an oral contract existed, you may consider, among other things, industry customs, the parties' conduct and communications before and after the formation of the alleged contract, and the parties' performance of the alleged contract or lack thereof.