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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ATARI INTERACTIVE, INC.,  
Plaintiff,  
v.  
REDBUBBLE, INC.,  
Defendant.

Case No. 18-cv-03451-JST

**JURY INSTRUCTIONS**

Following are the jury instructions the Court currently intends to give in this matter,  
subject to further discussion with the parties regarding how to address the issue of compilation.

**IT IS SO ORDERED.**

Dated: November 2, 2021

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JON S. TIGAR  
United States District Judge

United States District Court  
Northern District of California

**1.4 DUTY OF JURY**

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Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct you on the law that applies to this case. Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

United States District Court  
Northern District of California

**1.6 BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE**

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2 When a party has the burden of proving any claim or affirmative defense by a  
3 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or  
4 affirmative defense is more probably true than not true.

5 You should base your decision on all of the evidence, regardless of which party presented  
6 it.

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United States District Court  
Northern District of California

**1.9 WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits that are admitted into evidence;
3. any facts to which the lawyers have agreed; and
4. any facts that I have instructed you to accept as proved.

United States District Court  
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**1.10 WHAT IS NOT EVIDENCE**

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2 In reaching your verdict, you may consider only the testimony and exhibits received into  
3 evidence. Certain things are not evidence, and you may not consider them in deciding what the  
4 facts are. I will list them for you:

4 1. Arguments and statements by lawyers are not evidence. The lawyers are not  
5 witnesses. What they have said in their opening statements, closing arguments and at other times  
6 is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember  
7 them differ from the way the lawyers have stated them, your memory of them controls.

7 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to  
8 their clients to object when they believe a question is improper under the rules of evidence. You  
9 should not be influenced by the objection or by the court's ruling on it.

9 3. Testimony that is excluded or stricken, or that you have been instructed to  
10 disregard, is not evidence and must not be considered. In addition, some evidence was received  
11 only for a limited purpose; when I have instructed you to consider certain evidence only for a  
12 limited purpose, you must do so and you may not consider that evidence for any other purpose.

12 4. Anything you may have seen or heard when the court was not in session is not  
13 evidence. You are to decide the case solely on the evidence received at the trial.  
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