

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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\_\_\_\_\_,

Plaintiff,

vs.

Civ. No. \_\_\_\_ - \_\_\_\_ CG/ \_\_\_\_

\_\_\_\_\_,

Defendant.

**COURT'S JURY INSTRUCTIONS**

Jury Instruction No. \_\_\_\_\_

MEMBERS OF THE JURY:

Now that you have been sworn as the Jury to try this case, I will give you some preliminary instructions to guide you during this trial.

By your verdict you will decide the disputed issues of fact. At the end of the trial, I will give you detailed guidance on the law and on how you will go about reaching your decision. But now, I simply want to generally explain how the trial will proceed.

The order of the trial's proceedings will be as follows. First, the lawyers for each of the parties will be permitted to address you in turn and make what we call their "opening statements." The attorneys may explain the issues in the case and summarize the facts they expect the evidence will show.

Evidence will be presented from which you will have to determine the facts. The evidence will consist of the testimony of the witnesses, documents, and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate.

Plaintiff will offer its evidence. After Plaintiff's "case in chief," Defendant may present evidence, but Defendant is not required to do so. Thereafter, Plaintiff may be permitted to introduce rebuttal evidence.

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. And if I should sustain an objection to a question that

goes unanswered by a witness, you should not guess or speculate what the answer might have been nor should you draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to confer with the lawyers from time to time out of your hearing with regard to questions of law or procedure that require consideration by the court or judge alone. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions whenever possible, but please be patient. Even if the trial seems to be moving slowly, conferences often save time in the end.

You are to consider all of the evidence received in this trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject. You, and you alone, are judges of the facts. Now, as you know, I am the judge presiding over this trial. You'll notice that, when I come into the courtroom, everyone is asked to rise. Everyone rises when I enter and leave the courtroom, and that's a sign of respect for the judicial office. You, as judges of the facts, are accorded that same respect, and we will all rise as you come in and as you depart the courtroom.

You should pay close attention to the testimony. Although, as you can see, the Court Reporter is making a stenographic record of everything that is said, typewritten transcripts will not be prepared for your use during your deliberations. On the other hand, any exhibits admitted in evidence during the trial will be available to you for detailed study, if you wish, during your deliberations. So, if an exhibit is received in evidence but is not fully read or shown to you at the time, don't be concerned because you will get to see and study it later during your deliberations.

When the evidence portion of the trial is completed, the lawyers will be given another opportunity to address you. Prior to their closing arguments, I will instruct you on the applicable law. After the closing arguments, you will retire to deliberate upon your verdict.

During the trial you should keep an open mind and should avoid reaching any hasty impressions or conclusions. Reserve your judgment until you have heard all of the testimony and evidence, the lawyers' closing arguments, and my instructions to you concerning the applicable law.

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes. If you do decide to take notes, please be careful not to get so involved in note-taking that you become distracted; and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes, please leave them in the jury room at night and do not discuss the contents of your notes until you begin deliberations.

Because of your obligation to keep an open mind during the trial, coupled with your obligation to then decide the case only on the basis of the testimony and evidence presented, you must not discuss the case during the trial in any manner, with anyone - even among yourselves. This means that during the trial you must not hear or read about the case in the media, and you must not conduct any independent research about this case, the matters in the case, or the individuals involved in the case. In other words,

you must not attempt to gather any information on your own from any source outside this courtroom that you think might be helpful in deciding the case. Don't engage in any outside reading, don't attempt to visit any places mentioned in the case, and do not in any other way try to learn about the case outside the courtroom. Don't consult dictionaries or reference materials, search the internet, or use any electronic tools or print reference materials to obtain information about this case or to help you decide the case. The reason for this is that your decision in this case must be made solely on the evidence presented at the trial.

I hope that for all of you this case is interesting and noteworthy; however, certain developments in technology compel me to point out that some common, daily activities many of you may enjoy are strictly forbidden in your role as jurors. I know that many of you use cell phones, social media, the internet, and other tools of technology. You must not use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, text messaging, any blogs or websites, or social media, including but not limited to Twitter, Facebook, Snapchat, Instagram, TikTok, and YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here.

What you may do is advise anyone who needs to know, such as family members, employers, employees, schools, teachers, or daycare providers, that you are a juror in a case and the judge has ordered you not to discuss it until you've reached a verdict and have been discharged. Once you've been discharged as jurors, you will be free to discuss this case or investigate anything about it as you wish.

Now, we will begin by affording the lawyers an opportunity to make their opening arguments. I caution you that the statements that the lawyers make now (as well as the arguments they present at the end of the trial) are not to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides. So, I ask that you now give the lawyers your close attention as I recognize them for purposes of opening statements.

**SOURCES:** 10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.01 (2011)  
Preliminary Instructions before Trial

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.02 (2011)  
Note-Taking by Jurors

11th Cir. PATTERN JURY INSTRUCTIONS (Civil) (2005)  
Preliminary Instructions before Trial

Jury Instruction No. \_\_\_\_\_

**MEMBERS OF THE JURY:**

You have now heard all of the evidence in the case.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

**SOURCES:**

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.03 (2011)  
Introduction to Final Instructions [¶¶ 1-2]

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.04 (2011)  
Duty to Follow Instructions [¶ 3; fourth sentence ¶ 4, last phrase; third sentence ¶ 5; ¶ 7]

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.07 (2011)  
Evidence—Direct and Circumstantial—Inferences [third and fourth sentences ¶ 6]

7th Cir. FEDERAL JURY INSTRUCTIONS (Civil) § 1.01 (2010)  
Functions of the Court and the Jury [¶¶ 3-5]

Jury Instruction No. \_\_\_\_\_

You, as jurors, are the judges of the facts. But in determining what actually happened in this case—that is, in reaching your decision as to the facts—it is your sworn duty to follow the law I am now in the process of defining for you.

And you must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own idea or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

By the same token it is also your duty to base your verdict solely upon the evidence in the case, without prejudice or sympathy.

- SOURCES:**
- 10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.03 (2011)  
Introduction to Final Instructions [¶¶ 1-2]
  - 10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.04 (2011)  
Duty to Follow Instructions [¶ 3; fourth sentence ¶ 4, last phrase; third sentence ¶ 5; ¶ 7]
  - 10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.07 (2011)  
Evidence—Direct and Circumstantial—Inferences [third and fourth sentences ¶ 6]
  - 7th Cir. FEDERAL JURY INSTRUCTIONS (Civil) § 1.01 (2010)  
Functions of the Court and the Jury [¶¶ 3-5]

Jury Instruction No. \_\_\_\_\_

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of justice.

**SOURCES:**

11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 2.3 (2005)  
Consideration of the Evidence; Duty to Follow Instructions; Governmental Entity or Agency Involved [excerpt] [version 2]

5th Circuit PATTERN JURY INSTRUCTIONS (Civil) § 2.13 (2009)  
Bias--Corporate Party Involved [version 1; last sentence]

Jury Instruction No. \_\_\_\_

Some of the parties in this case are corporations. A corporation is entitled to the same fair and unprejudiced treatment as an individual, and you should decide the case with the same impartiality as you would use in deciding a case between individuals.

**SOURCES:** 11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 2.3 (2005)  
Consideration of the Evidence; Duty to Follow Instructions; Governmental Entity or Agency Involved [excerpt] [version 2]

5th Circuit PATTERN JURY INSTRUCTIONS (Civil) § 2.13 (2009)  
Bias--Corporate Party Involved [version 1; last sentence]

**COMMENT:** As noted by brackets, which version of this instruction is given is determined by whether a party to the lawsuit is: (1) a corporation [5th Cir. § 2.13]; (2) a governmental entity or agency [11th Cir. BI § 2.3]. This instruction is omitted where neither a corporation nor a governmental agency/entity is involved.

Jury Instruction No. \_\_\_\_\_

A corporation can act only through its officers and employees. Any act or omission of an officer or an employee of a corporation, within the scope or course of his or her employment, is the act or omission of the corporation.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-409 (West 2013)  
Corporation acts through employees

Jury Instruction No. \_\_\_\_\_

Although there is more than one plaintiff in this action, it does not follow from that fact alone that if one is entitled to recover, another is entitled to recover. The rights of the various plaintiffs in this lawsuit are separate and distinct, and you should decide the issues as if each plaintiff had brought a separate lawsuit.

In this connection, you will note that some of the instructions apply to one plaintiff, while other instructions apply to all plaintiffs.

Although there is more than one defendant in this action, it does not follow from that fact alone that if one is liable another is liable. Each defendant is entitled to a fair consideration of that defendant's own defense. You will decide each defendant's case separately, as if each were a separate lawsuit.

**SOURCES:** 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.5 (2007)  
Two or More Parties - Different Legal Rights [first sentence]

N.M. RULES ANN., Civ. UJI 13-115 (West 2013)  
Two or More Plaintiffs [versions 1, 3]

N.M. RULES ANN., Civ. UJI 13-116 (West 2013)  
Two or More Defendants [versions 2, 3]

**COMMENT:** Instructions combined. Which version of this instruction will be given is governed by whether there are multiple (1) plaintiffs [version 1], (2) defendants [version 2], or (3) both [version 3].

Jury Instruction No. \_\_\_\_\_

It is a general rule in civil cases that a party seeking a recovery or a party relying on a defense has the burden of proving every essential element of its claim or defense by a preponderance of the evidence.

To prove by a preponderance of the evidence means to establish that something is more likely true than not true. When I say in these instructions that a party has the burden of proof, I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.

- SOURCES:**
- 11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 6.1 (2005)  
Basic Instructions; Burden of Proof When Only Plaintiff Has Burden of Proof
  - 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 2.20 (2009)  
Burden of Proof When Only Plaintiff Has Burden [first sentence ¶1]
  - 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.3 (2007)  
Burden of Proof—Preponderance of the Evidence [second sentence ¶ 2, last phrase]

Jury Instruction No. \_\_\_\_\_

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

**SOURCES:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 2.18 (2009)  
Consideration of the Evidence [first sentence ¶ 1]

8th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.02 (2011)  
Evidence; Limitations [second sentence ¶ 1 (including bulleted language)]

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.7 (2007)  
(emphasis added & bulleted language summarized) What is Not Evidence  
[¶ 3]

**COMMENTS:** Where no facts are judicially noticed during trial, the fourth bullet in ¶ 1 will be omitted.

Jury Instruction No. \_\_\_\_\_

You may consider either direct or circumstantial evidence. “Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. “Circumstantial evidence” consists of proof of facts or circumstances which give rise to a reasonable inference of the truth of the fact sought to be proved. The law makes no distinction between the weight to be given to either direct or circumstantial evidence.

**SOURCES:** 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.9 (2007)  
Direct and Circumstantial Evidence

8th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.02 (2011)  
Evidence; Limitations [fourth sentence ¶ 1, final clause]

Jury Instruction No. \_\_\_\_\_

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness' testimony. In weighing the testimony of a witness you should consider the witness' relationship to the plaintiff or to the defendant; the witness' interest, if any, in the outcome of the case; manner of testifying; opportunity to observe or acquire knowledge concerning the facts about which the witness testified; candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence or previous statements inconsistent with the witness' present testimony. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

- SOURCES:**
- 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.9 (2007)  
Direct and Circumstantial Evidence
  - 8th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.02 (2011)  
Evidence; Limitations [fourth sentence ¶ 1, final clause]
  - 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) §§ 2.18, 3.4 (2009)  
Consideration of the Evidence; Witnesses

Jury Instruction No. \_\_\_\_\_

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct, or by evidence that at other times the witness has made material statements, under oath or otherwise, which are inconsistent with the present testimony of the witness.

[or by evidence that the general reputation of the witness for truth, honesty or integrity is bad]

[or by evidence that the witness has been convicted of a crime]

[or by specific acts of wrongdoing of the witness]

If you believe that any witness has been impeached or discredited, it is your exclusive province to give the testimony of that witness only such credit as you may think it deserves.

**SOURCES:** 10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.10 (2011)  
Impeachment By Prior Inconsistencies [modified]

5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 2.11, 3.4 (2009)  
Consideration of the Evidence; Witnesses

Jury Instruction No. \_\_\_\_\_

An expert witness is permitted to state an opinion based upon a question which, for the purposes of trial, assumes as true certain facts which may or may not be true.

It will be for you in your deliberations, however, to determine from all of the evidence whether or not the facts assumed have been proved to be true.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist you in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state an expert opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

**SOURCES:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 3.5, (2009)  
Expert Witnesses

N.M. RULES ANN., CIV. UJI 13-213 (West 2013)  
Expert testimony

Jury Instruction No. \_\_\_\_\_

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. Such charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

**SOURCE:** 9th Cir. PATTERN JURY INSTRUCTIONS (Civil) §§ 2.14, 2.15

Jury Instruction No. \_\_\_\_\_

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

**SOURCE:** 7th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 1.09, (2010)  
Limited Purpose of Evidence

Jury Instruction No. \_\_\_\_\_

Deposition testimony is testimony that was taken under oath before trial and has been preserved [in writing][by video]. This testimony is entitled to the same consideration that you give any other testimony at this trial.

**SOURCES:**

N.M. RULES ANN., CIV. UJI 13-203 (West 2013)  
Deposition testimony

5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 2.23, (2009)  
Deposition Testimony

Jury Instruction No. \_\_\_\_\_

Interrogatories are written questions asked by one party to another before trial and answered under oath. The questions and answers may be read at trial as evidence. The answers read to you are testimony under oath and are entitled to the same consideration that you give any other testimony.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-204 (West 2013)  
Interrogatories

Jury Instruction No. \_\_\_\_

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. Your notes are only to refresh your recollection. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

**SOURCE:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 3.7 (2009) (excerpt)

Jury Instruction No. \_\_\_\_\_

An [act][or][omission][or][\_\_\_\_\_](*condition*) is a “cause” of [injury][harm][\_\_\_\_\_](*other*) if [, unbroken by an independent intervening cause,] it contributes to bringing about the [injury][harm][\_\_\_\_\_](*other*) [, and if injury would not have occurred without it]. It need not be the only explanation for the [injury][harm] [\_\_\_\_\_](*other*), nor the reason that is nearest in time or place. It is sufficient if it occurs in combination with some other cause to produce the result. To be a “cause,” the [act][or][omission][or] [\_\_\_\_\_](*condition*), nonetheless, must be reasonably connected as a significant link to the [injury][harm].

**SOURCES:**

N.M. RULES ANN., CIV. UJI 13-305 (West 2013)  
Causation

(Refer to the Directions for Use and Committee Commentary for explanations of how and when to use the bracketed material. If the evidence presents an issue with regard to an independent intervening cause, NM UJI 306 can also be given.)

Jury Instruction No. \_\_\_\_\_

An independent intervening cause interrupts and turns aside a course of events and produces that which was not foreseeable as a result of an earlier act or omission.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-306 (West 2013)  
Independent intervening cause

Jury Instruction No. \_\_\_\_\_

You are not to engage in any discussion of damages unless you have first determined that there is liability, as elsewhere covered in these instructions.

The fact that you are given instructions on damages is not to be taken as an indication as to whether the court thinks damages should or should not be awarded.

**SOURCES:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 15.1, (2009)  
Consider Damages Only If Necessary

N.M. RULES ANN., CIV. UJI 13-1801 (West 2013)  
Liability must be determined before damages

Jury Instruction No. \_\_\_\_\_

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award only those damages which will reasonably compensate the plaintiff for the injuries that the plaintiff has sustained as a result of defendant(s)' wrongful conduct.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-1803 (West 2013)  
Measure of damages; general

Jury Instruction No. \_\_\_\_\_

You must not award compensatory damages more than once for the same injury. For example, if the plaintiff prevails on more than one of plaintiff's claims and establishes a dollar amount for plaintiff's injuries, you must not award the plaintiff any additional compensatory damages on each claim. The plaintiff is only entitled to be made whole once, and may not recover more than plaintiff has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all injuries.

**SOURCES:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 4.8, (2009)  
Damages

N.M. RULES ANN., CIV. UJI 13-1802 (West 2013)  
Measure of damages; general

Jury Instruction No. \_\_\_\_\_

If you have found that plaintiff is entitled to damages arising in the future, you must determine the amount of such damages.

If these damages are of a continuing nature, you may consider how long they will continue.

As to loss of future earning ability, you may consider that some persons work all their lives and others do not and that a person's earnings may remain the same or may increase or decrease in the future.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-1821 (West 2013)  
Future damages; extent and amount

Jury Instruction No. \_\_\_\_\_

In fixing the amount of money which will reasonably and fairly compensate Plaintiff, you should consider that one who is damaged must exercise ordinary care to minimize existing damages and to prevent further damages. Plaintiff may not recover for losses which could have been prevented by reasonable efforts by Plaintiff.

The burden of proof with respect to this issue is on the Defendants.

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-1811 (West 2013)  
Mitigation

Jury Instruction No. \_\_\_\_\_

If you find that a plaintiff should recover compensation for damages, and if you further find that the conduct of a defendant was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], then you may award punitive damages against that defendant.

Punitive damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses.

The amount of punitive damages must be based on reason and justice taking into account all the circumstances, including the nature of the wrong and such aggravating and mitigating circumstances as may be shown. The amount awarded, if any, must be reasonably related to the actual damages and injury and not disproportionate to the circumstances.

[Malicious conduct is the intentional doing of a wrongful act with knowledge that the act was wrongful.]

[Willful conduct is the intentional doing of an act with knowledge that harm may result.]

[Reckless conduct is the intentional doing of an act with utter indifference to the consequences.]

[Wanton conduct is the doing of an act with utter indifference to or conscious disregard for a person's rights or safety.]

**SOURCE:** N.M. RULES ANN., CIV. UJI 13-1827 (West 2013)  
Punitive damages  
(See UJI 13-1827 when vicarious liability is relevant.)

Jury Instruction No. \_\_\_\_\_

Faithful performance by you of your duties is vital to the administration of justice.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate in an effort to reach an agreement if you can do so without giving up your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

**SOURCES:** N.M. RULES ANN., CIV. UJI 13-2001, 13-2002 & 13-2006 (West 2013)  
Duties of Jurors

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.23 (2011)  
Duty to Deliberate

Jury Instruction No. \_\_\_\_\_

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, computer, the Internet, any text or instant messaging service, blog, or any website such as Facebook, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

You may not use electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media may be wrong, incomplete, or inaccurate. You are permitted to discuss the case with only your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors and the parties in this case. This would unfairly and adversely impact the judicial process.

**SOURCES:** 5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 1.1 (2011)  
9th Cir. MANUAL OF MODEL CIVIL JURY INSTRUCTIONS § 3.3 (2017)  
Communication with Court

Jury Instruction No. \_\_\_\_\_

Upon retiring to the jury room you should first elect a foreperson who will preside over your deliberations and will be your spokesperson here in court.

A form of verdict has been prepared for your convenience. You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign it and then return to the courtroom.

If, during your deliberations, you should desire to communicate with me, please put your message or question in writing signed by the foreperson, and pass the note to the court security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom. I caution you, however, with regard to any message or question you might send, that you should never state your numerical division.

**SOURCES:**                   MANUAL OF MODEL CIVIL JURY INSTRUCTIONS § 3.5 (2017)  
Return of Verdict

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THE HONORABLE CARMEN E. GARZA  
CHIEF UNITED STATES MAGISTRATE JUDGE