

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

)	
)	
Plaintiff[s],)	
)	
vs.)	NO. CIV __-____ RB/____
)	
)	
)	
Defendant[s].)	

COURT’S JURY INSTRUCTIONS

INSTRUCTION A

Members of the Jury:

You have now been sworn as the Jury to try this case. 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, Ms. Chavez says "all 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, Blackberries, 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, Blackberry, iPhone, Androids, text messaging, or on Twitter, through any blog or website, including Facebook, Google+, My Space, LinkedIn, or 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.

RB Civil Stock

SOURCES: 11th Cir. PATTERN JURY INSTRUCTIONS (Civil), Preliminary Instructions Before Trial (2005)
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

INSTRUCTION NO. 1

Members of the Jury:

In any jury trial, there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every civil case—for example, instructions about the burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts that you may return. These instructions will be given to you for use in the jury room, so you need not take notes.

As judges of the facts, you have two duties. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. It is your sworn duty to follow all of the rules of law as I explain them to you, even if you disagree with them. Each of the instructions is important, and you must follow all of them, regardless of the consequences.

Perform these duties fairly and impartially. Do not allow sympathy or prejudice to influence you. That was the promise you made and the oath you took.

Two additional points bear mention. First, while you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from the facts which have been proved.

Second, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

RB Civil Stock

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]

INSTRUCTION NO. 2

In this case, to prevail, Plaintiff must prove every essential part of [her] [his] [its] claim by a “preponderance of the evidence.” This is sometimes called the “burden of proof” or the “burden of persuasion.”

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that Plaintiff’s claim is more likely true than not true. In deciding whether any fact has been proved by a preponderance of the evidence, you should base your decision on all of the evidence, regardless of which party presented it.

If the proof fails to establish any essential part of Plaintiff’s claim by a preponderance of the evidence, you should find for Defendant as to that claim.

RB Civil Stock

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]

INSTRUCTION NO. 2a

In this case, to prevail, each party asserting a claim or a defense must prove every essential part of the claim or defense by a “preponderance of the evidence.” This is sometimes called the “burden of proof” or the “burden of persuasion.”

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that a claim or contention is more likely true than not true.

When more than one claim is involved, and when more than one defense is asserted, you should consider each claim and each defense separately. But in deciding whether any fact has been proved by a preponderance of the evidence, you should base your decision on all of the evidence, regardless of which party presented it.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence you should find against the party making that claim or contention.

RB Civil Stock

SOURCES:

11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 6.2 (2005)
Basic Instructions; Burden of Proof When There Are Multiple Claims Or When
Both Plaintiff And Defendant Or Third Parties Have Burden Of Proof

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.3 (2007)
Burden of Proof—Preponderance of the Evidence [second sentence ¶ 3, last
phrase]

INSTRUCTION NO. 2b

Regarding [Plaintiff's [*name claim*] claim] [Defendant's [*name counterclaim*] claim], however, the standard of proof is not a "preponderance of the evidence." A higher degree of proof is required. Plaintiff [Defendant] has the burden of proving each essential part of this claim by "clear and convincing evidence."

"Clear and convincing evidence" simply means that [*applicable definition*] [you must be persuaded by the evidence that it is highly probable that the claim [or affirmative defense] is true].

In deciding whether any fact has been established by "clear and convincing" evidence, you should base your decision on all of the evidence, regardless of which party presented it. If the proof fails to establish any essential part of the [*name claim/counterclaim*] by "clear and convincing" evidence, you should find against the party making that claim or contention.

RB Civil Stock

SOURCES: N.M. RULES ANN., Civ. UJI 13-304 (West 2012)
Burden of Proof; greater weight of the evidence; clear and convincing evidence

9th Cir. Manual of Model Jury Instructions (Civil) § 1.4 (2007)
Burden of Proof—Clear and Convincing Evidence [¶ 2]

9th Cir. Manual of Model Jury Instructions (Civil) § 1.3 (2007)
Burden of Proof - Preponderance of the Evidence [first sentence ¶ 3, last phrase]

COMMENT: The definition of "the 'clear and convincing' standard of proof depends on the substantive law being applied." 7th Cir. FEDERAL JURY INSTRUCTIONS (Civil) § 1.28 cmt. (2005). The Supreme Court, however, has defined "clear and convincing" evidence by the "highly probable" standard. *See* 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 5.2 cmt. (2001) (citing *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

INSTRUCTION NO. 3

[The Plaintiff has brought a claim of [name of claim] based on a [federal/state] law known as the [name of law] Act, which will be referred to in these instructions as the [acronym].] In order to prevail on [his] [her] [its] [name of claim] claim, Plaintiff must prove each of the following elements by a preponderance of the evidence:

[List elements]

Defendant denies those claims[.] [and also contends that [Defendant's counterclaims and/or affirmative defenses].] [Defendant has the burden of proof on these [counterclaims and/or affirmative defenses.]]

[Plaintiff denies Defendant's [counterclaims and/or affirmative defenses.]

RB Civil Stock

SOURCES:

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 12.1A (2007)
ADA Employment Actions—Where Evidence Supports “Sole Reason” or “Motivating Factor” [first sentence ¶ 1]

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 9.2 (2007)
Section 1983 Claim Against Defendant in Individual Capacity—Elements and Burden of Proof [second sentence ¶ 1]

9th Cir. Manual of Model Jury Instructions (Civil) § 1.2 (2007)
Claims and Defenses [¶¶ 3-4]

COMMENT:

The first sentence will not be given unless it meaningfully aids the Jury's understanding of Plaintiff's claim(s).

The essential elements of each claim, counterclaim, and/or affirmative defense(s) should be inserted as indicated above. Parties must number, and set off in a separate paragraph, each element, as follows:

- (1) [state/describe element number 1];
- (2) [state/describe element number 2]; [and]
- (3) [state/describe element number 3]

Alternative, claim-specific instructions will be considered by the Court. See, e.g., 11th Cir. PATTERN JURY INSTRUCTIONS (Civil) FCI §§ 1.1.1-13.1 (2005) (“Federal Claims Instructions”).

INSTRUCTION NO. 4

You must consider only the evidence in this case during your deliberations. The evidence includes:

- (1) testimony of witnesses;
- (2) documents and other things received as exhibits; [and]
- (3) any facts that have been stipulated--that is, formally agreed to by the parties[.]; [and]
- (4) any facts that have been judicially noticed--that is facts which I say you must accept as true.]

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) statements and arguments by the lawyers;
- (2) questions and objections by the lawyers;
- (3) testimony that has been excluded or stricken, or that you have been instructed to disregard; and
- (4) anything you may see or hear when the court is not in session.

You must not consider any of these things as evidence in deciding this case.

RB Civil Stock

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.

INSTRUCTION NO. 5

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence: the law makes no distinction between the weight to be given to direct and circumstantial evidence.

Also, it is for you to decide how much weight to give to any evidence. For instance, the testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

RB Civil Stock

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 (2009)
Consideration of the Evidence [third sentence ¶ 2]

INSTRUCTION NO. 6

A deposition is testimony taken under oath before trial that has been preserved [, in writing, by a court reporter] [by video]. Deposition testimony is entitled to the same consideration as any other testimony at this trial.

RB Civil Stock

SOURCES:

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

5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 2.23 (2009)
Deposition Testimony [first sentence (depositions taken by a court reporter)]

INSTRUCTION NO. 7

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 entitled to the same consideration as any other testimony.

RB Civil Stock

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

INSTRUCTION NO. 8

The Rules of Evidence do not ordinarily permit a witness to testify as to an opinion or conclusion. However, a witness who is qualified as an expert in a subject may be permitted to state an opinion as to that subject.

After considering the reasons stated for an opinion, you should give it such weight as it deserves. For instance, you may reject an opinion entirely if you conclude that it is unsound.

RB Civil Stock

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

INSTRUCTION NO. 2

In saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, [including any party to the case,] you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness' memory;
- (3) the witness' manner while testifying;
- (4) the witness' interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness' testimony;
- (6) the reasonableness of the witness' testimony in light of all the evidence;
and
- (7) any other factors that bear on believability.

Remember, the weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

RB Civil Stock

SOURCES:

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 1.11 (2007)
Credibility of Witnesses [second sentence ¶ 1; ¶¶ 2-3]

11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 3 (2005) (emphasis in original)
Basic Instructions; Credibility of Witnesses [first sentence ¶ 1]

INSTRUCTION NO. 10

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that, before this trial, the witness said or did something, or failed to say or do something, that is different from the witness' testimony here in court.

The earlier statement was brought to your attention only to help you decide how believable the testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating the witness's testimony here in court.

RB Civil Stock

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

INSTRUCTION NO. 11

The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether to believe the witness and how much weight to give his or her testimony.

RB Civil Stock

SOURCES:

11th Cir. PATTERN JURY INSTRUCTIONS (Civil) BI § 4.2 (2005)
Impeachment Of Witnesses; Inconsistent Statement And Felon Conviction

8th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 2.09 (2011)
Impeachment of Witness, Prior Conviction [final clause]

INSTRUCTION NO. 12

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

RB Civil Stock

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

INSTRUCTION NO. 13

[Version 1 - corporation: A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.] [Version 2 - government agency/entity: A governmental [agency] [entity] and all other persons stand equal before the law and must be dealt with as equals in a court of justice.] Do not let bias, prejudice or sympathy play any part in your deliberations.

RB Civil Stock

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.

INSTRUCTION NO. 14

You should decide the case as to each [plaintiff] [defendant] [party] separately.

[Version 1 - multiple plaintiffs: 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.] [Version 2 - multiple defendants: 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.] [Version 3 - multiple plaintiffs and defendants: The rights of the various parties to this lawsuit are distinct. For instance, it does not follow that if one plaintiff is entitled to recover, another is necessarily entitled to recover, as well. You should decide the issues as if each plaintiff had brought a separate lawsuit. Likewise, because 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.]

RB Civil Stock

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].

INSTRUCTION NO. 15

In the event you find that Plaintiff proved [her] [his] [its] claim against Defendant by [a preponderance of the evidence] [clear and convincing] evidence, you must determine the damages to which the Plaintiff is entitled. However, 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.

You should not interpret the fact that I have given instructions about Plaintiff's damages as an indication in any way that I believe that damages should or should not be awarded.

RB Civil Stock

SOURCES:

5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 15.1 (2009)
Consider Damages Only If Necessary [first sentence ¶ 1, first clause ¶ 2]

N.M. RULES ANN., Civ. UJI 13-1801 (West 2013)
Liability Must Be Determined Before Damages [second sentence ¶ 1, second clause ¶ 2]

INSTRUCTION NO. 16

Plaintiff has the burden of proving damages by a preponderance of the evidence.
It is for you to determine what damages, if any, have been proved.

You must use sound discretion in fixing any award for damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that Plaintiff prove the amount of [his] [her] [its] losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. Sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.

RB Civil Stock

SOURCES: 9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 5.1 (2007)
Damages—Proof [¶ 1]

5th Cir. PATTERN JURY INSTRUCTIONS (Civil) § 15.2 (2009) (modified)
Compensatory Damages [first, second and third sentences ¶ 2]

N.M. RULES ANN., Civ. UJI 13-1802 (West 2013)
Measure of Damages; General; With Preexisting Conditions [last sentence ¶ 2]

INSTRUCTION NO. 17

In fixing the amount of money which will reasonably and fairly compensate Plaintiff, you are to consider that an injured person must exercise ordinary care to minimize or lessen [her] [his] [its] damages. Damages caused by [her] [his] [its] failure to exercise such care cannot be recovered.

RB Civil Stock

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

INSTRUCTION NO. 18

[Compensatory Damages: Governed by claim(s) at issue. Parties must submit an appropriate instruction. Where the Court has jurisdiction pursuant to 28 U.S.C. § 1332 (1993), the applicable state law will govern the parties' instruction(s).]

RB Civil Stock

SOURCE[S]: [Provide citation(s) to pattern jury instruction(s) or supporting authority.]

COMMENT: [Where the proposed instruction varies materially from supporting authority, or otherwise warrants further explanation, parties should provide their reasoning here.]

MODIFICATIONS: [Note whether, and detail where, the proposed instruction reflects change(s) from the pattern jury instruction(s).]

INSTRUCTION NO. 19

[Future Damages: Governed by claim(s) at issue. Parties must submit an appropriate instruction. Where the Court has jurisdiction pursuant to 28 U.S.C. § 1332 (1993), the applicable state law will govern the parties' instruction(s).]

RB Civil Stock

SOURCE[S]: [Provide citation(s) to pattern jury instruction(s) or supporting authority.]

COMMENT: [Where the proposed instruction varies materially from supporting authority, or otherwise warrants further explanation, parties should provide their reasoning here.]

MODIFICATIONS: [Note whether, and detail where, the proposed instruction reflects change(s) from the pattern jury instruction(s).]

INSTRUCTION NO. 20

[Punitive Damages: Governed by claim(s) at issue. Parties must submit an appropriate instruction. Where the Court has jurisdiction pursuant to 28 U.S.C. § 1332 (1993), the applicable state law will govern the parties' instruction(s).]

RB Civil Stock

SOURCE[S]: [Provide citation(s) to pattern jury instruction(s) or supporting authority.]

COMMENT: [Where the proposed instruction varies materially from supporting authority, or otherwise warrants further explanation, parties should provide their reasoning here.]

MODIFICATIONS: [Note whether, and detail where, the proposed instruction reflects change(s) from the pattern jury instruction(s).]

INSTRUCTION NO. 21

In a moment, Ms. Chavez will escort you to the jury room and provide you with copies of the instructions that I have just read. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

To reach a verdict, whether for Plaintiff or Defendant, all of you must agree. That is, your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

You must consult with one another and deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

A form of verdict has been prepared for your convenience. After you have reached unanimous agreement on a verdict, the foreperson will fill in the form that has

been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

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 the telephone, a cell phone, smart phone, iPhone, Blackberry, Android or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, 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. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these 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 might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with 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 or the parties in the case. This would unfairly and adversely impact the judicial process.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the court security officer, who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, that with any message or question you might send, you should not tell me any details of your deliberations or indicate how many of you are voting in a particular way on any issue. Under no circumstances should you reveal to me the numerical division of the jury.

RB Civil Stock

SOURCES:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.23 (2011)
Duty to Deliberate - Verdict Form [modified]

9th Cir. MANUAL OF MODEL JURY INSTRUCTIONS (Civil) § 3.3 (2007)
Return of Verdict [second and third sentence ¶5]

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

)	
)	
Plaintiff[s],)	
)	
vs.)	NO. CIV __-__ RB/ __
)	
)	
)	
Defendant[s].)	

VERDICT

[**Form of Verdict:** Governed by claim(s) at issue. Parties must submit a form of verdict in the format reflected here.]

DATED this ____ day of _____, 201__.

FOREPERSON