**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**

**Plaintiff,**

**v. No. \_\_-cv-\_\_\_ SMV/\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**

**Defendant.**

**STOCK JURY INSTRUCTIONS**

**FOR CIVIL TRIALS BEFORE**

**THE HONORABLE STEPHAN M. VIDMAR**

Effective October 14, 2016

VOIR DIRE ORIENTATION STATEMENT BY THE COURT

Good morning. I’d like to thank you for coming to court this morning. I’m Judge Vidmar, and I will be presiding over this trial. The Constitution guarantees a right to a jury trial in matters of law. Our justice system depends on the willingness of our citizens to serve as jurors, and we appreciate your service. Most of you will never serve in the other branches of government, but this will give you the chance to serve as judges, for you will be judges of the facts. Hopefully this will be an educational and interesting experience for you.

As I said, I am the trial judge, and it is my job to keep this case moving smoothly and to rule on evidentiary issues. This is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the court reporter who will make a record of these proceedings. This is Rebecca Helmick, who is the courtroom deputy; she will keep track of the exhibits that are admitted and will attend to your needs. My law clerks, Annie Mason and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, will also assist me.

I am going to ask you a series of questions, and then the lawyers may wish to ask you a few questions. This part of the trial is sometimes called voir dire, which comes from Old French, and means “to speak the truth.” I usually call this part of the trial jury selection, but it is a time “to speak the truth” about attitudes, opinions, or beliefs that you may have about the issues in this case.

The purpose of jury selection is to enable the Court and the attorneys to match jurors with the case for which they are best suited. As we go through life, we all have different experiences, and those often shape our opinions. Everyone develops likes and dislikes, and we are all prejudiced or biased about something. Some jurors would be well suited for a particular case, others may have some relationship or life experience that would make it more difficult for that juror to sit as a juror on that case. This does not mean that you are a bad person or an unqualified juror, only that you may be better suited to be a juror on a different case.

Jury selection is an important part of this trial and I encourage you to freely discuss your attitudes, opinions, and ideas that relate to your ability to hear the issues in this case. If you have an answer to any question, please raise your hand and I will recognize you. If your answer concerns a private matter or one that you do not wish to discuss in front of the full jury panel, let me know and you may come up to the bench with counsel and give me your answer. This is your chance to talk, so if you have an opinion or a belief on an issue in this case, we would like to hear about that.

I will begin by giving you a brief overview of what this case is about.

[Joint statement of the Case]

OATH TO VENIRE ON VOIR DIRE

Do each of you solemnly swear or affirm that you will honestly answer any and all questions asked you by the Court or by the lawyers about your qualifications to serve as a juror in this case?

[Source: UJI 13-105A NMRA]

VOIR DIRE QUESTIONING BY THE COURT

1. Does anyone on the panel know, or have any of you or your close friends or relatives had any dealings with, [name of individual party], his relatives, or associates? If yes, please explain.
2. Do you have any personal knowledge of this case? If yes, please explain.
3. Have you read about this case or otherwise heard it discussed? If yes, please explain.
4. Do you have an opinion about information you have heard or read about this case? If yes, please explain.
5. The lawyer representing Plaintiff in this case is [attorney’s name] of the law firm [firm name]. Do any of you know [attorney’s name]? Have any of you had dealings with his law firm? If yes, please explain.
6. The lawyer representing Defendant in this case [attorney’s name] of the law firm [firm name]. Do any of you know [attorney’s name]? Have any of you had dealings with his law firm? If yes, please explain.
7. Have any of you, a member of your family, or a close friend ever had any dealings with [Defendant]? If yes, please explain.
8. Have you ever sat on a jury that failed to reach a verdict?
9. This trial may last up to [time period]. Is there any reason why such a length of trial would prevent you from giving your full and fair considerations to both parties?
10. In this case, you are to decide the liability of only one defendant. Curiosity is natural, and you may be tempted to speculate about the potential liability of others mentioned during this lawsuit or question someone’s absence. You are only to decide the issues before you based upon the evidence presented. Can you assure the Court and the parties that you can do that?
11. Those of you who have sat on criminal cases or watch television have heard of proof beyond a reasonable doubt. That is the standard of proof that is used in criminal cases. That is not the standard of proof that is to be used here because this is a civil case, not a criminal case. Rather, [Plaintiff] has the burden of proving its case against the defendant by what is called a “preponderance of the evidence.” This means that, to prevail, [Plaintiff] must show that its claims are more likely true than not true. Is there anyone who would require [Plaintiff] to prove its claims by a higher standard than preponderance of the evidence?
12. This case is very important to both [Plaintiff] and to [Defendant]. Both [Plaintiff] and to [Defendant] have a right to a fair trial. Is there any reason you feel you cannot give both sides your full and fair consideration?

The lawyers for the parties are now going to ask you some questions. The lawyers for the Plaintiff will go first.

OATH TO EMPANELED JURY

Do each of you solemnly swear or affirm that you will render a true verdict according to the law and evidence submitted?

[Source: UJI 13-108A NMRA]

PRELIMINARY INSTRUCTIONS

(after jurors are selected and sworn)

Members of the Jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you during this trial.

You are the judges of the facts. It will be your duty to find from the evidence what the facts are. You will then apply the law to the facts. I will instruct you on the applicable law later. You must follow that law whether you agree with it or not.

Nothing that I say or do is intended to indicate what your verdict should be.

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received as exhibits, and any facts that the lawyers agree to, or that I instruct you to find.

Certain things are not evidence and must not be considered by you.

1. Statements, arguments, and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to object when they believe evidence being offered is improper under the Rules of Evidence. You should not be influenced by the objection or by my ruling on it. If the objection is sustained, ignore the question. If I instruct you that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that I have excluded or tell you to disregard is not evidence and must not be considered.

4. Anything that you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in court.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness’s testimony to accept or reject. When determining the weight to be given to the testimony of a witness, you may consider his interest, if any, in the outcome of the case; his relationship to the parties; his manner while testifying; any bias or prejudice the witness may have; and whether the testimony of the witness was impeached by prior statements he made or by other evidence.

This is a civil case. The Plaintiff has the burden of proving its case by a preponderance of the evidence. This means that the Plaintiff has to produce evidence that, considered in light of all the facts, leads you to believe that the Plaintiff’s claims are more likely true than not true.

During trial it may be necessary for me to talk with the lawyers out of the hearing of the Jury, either by having a bench conference here while the Jury is present in the courtroom, or by calling a recess. The purpose of these conferences is to decide how certain evidence is to be treated under the Rules of Evidence and to avoid confusion and error.

During this trial and until you have rendered a verdict, do not discuss this case with anyone or permit anyone to discuss it with you or in your presence. This rule about not discussing the case includes discussions even with members of your family or friends. This rule also includes electronic communication. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, Snapchat, Instagram, and YouTube. If any person attempts to talk to you or communicate with you about this case, either in or out of the courthouse, you should immediately report that attempt to me. The attorneys and parties are not supposed to talk to jurors, even to say “hello.” So, if you happen to see them outside the courtroom, they will not speak to you. Please do not be offended by this. They will only be acting in accordance with my instructions.

Until you retire at the end of the case to begin your deliberations, do not talk about this case with each other.

You may not consider anything you may have read or heard about this case outside the courtroom. During trial, you must avoid news accounts about this case, whether it is on television, the radio, or the internet, or is in the newspaper. If you happen to see or hear any news about this trial, please let a member of my staff know.

Please do not attempt any tests, research, or experiments, and do not visit any location involved in this case. It would be difficult or impossible to duplicate conditions shown by the evidence; therefore, your results would not be reliable. Such conduct would also run contrary to the rule that your verdict must be based solely on the evidence presented to you in court. You also must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Nevertheless, in your deliberations, you need not ignore your backgrounds, including professional, vocational, and educational experience.

Please keep an open mind until the entire case has been completed and submitted to you. Your special responsibility as jurors requires that throughout this trial you exercise your judgment impartially and without regard to any sympathy, bias, or prejudice.

If you wish, you may take notes. Pencils and tablets have been provided for you. If you take notes, please leave them in the jury room when you leave at night. The notes are for your own personal use—they are not to be read or given to anyone else before or during deliberations. Even though the court reporter is making a record of these proceedings, a copy of the transcript will not be available for your use during deliberations. The exhibits will be available to you during your deliberations.

Ordinarily the lawyers will develop all relevant evidence that is necessary for you to reach your verdict. In rare situations, a juror may believe that a question is critical to reaching a decision on a necessary element of the case. In that situation, you may write out a question and provide it to the courtroom deputy before the witness leaves the witness stand. I will review the question with the lawyers and will determine whether it is a proper and necessary question. If it is, I will ask it. Please understand that the Rules of Evidence may prevent the question from being asked.

The trial will now begin. First, each side may make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the Plaintiff will present its witnesses and exhibits. Then, the Defendant will present his witnesses and exhibits. Each side may cross-examine witnesses presented by the other side.

After that, I will give you instructions on the law, and the lawyers will make their closing arguments to summarize and interpret the evidence for you.

[Plaintiff’s attorney], you may present Plaintiff’s opening statement.

INSTRUCTION No. \_\_\_

*STIPULATION*

[Given as needed, when a stipulation is offered.]

A stipulation is an agreement between both sides that certain facts are true. A stipulation

means simply that the Plaintiff and the Defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation.

INSTRUCTION No. \_\_\_

*DEPOSITION TESTIMONY*

[Given as needed, before deposition transcript is read.]

Deposition testimony is testimony that was taken under oath before trial and has been

preserved in writing. This testimony is entitled to the same consideration that you give any other

testimony at this trial.

From: NM UJI 12-203 (can substitute “by video” for “in writing” where necessary).

INSTRUCTION No. \_\_\_

*LIMITED PURPOSE INSTRUCTION FOR TESTIMONY AND/OR EXHIBITS*

[Given as needed, after limiting instruction is given.]

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.

From: Fifth Circuit Pattern § 2.15 (modified)

INSTRUCTION No. \_\_\_

*ATTORNEY INTERVIEW OF WITNESS*

[Given as needed]

An attorney has the right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not reflect adversely on the truth of such testimony.

INSTRUCTION No. \_\_\_

*PRIOR ACTS*

[Given as needed, after evidence is submitted.]

Evidence that a similar act was done at another time or on another occasion is not evidence or proof that the act was done in this case. You may consider evidence of such similar acts done at other times or on other occasions for the limited purpose of showing \_\_\_\_\_\_\_\_\_\_\_\_’s [state of mind, knowledge, intent, motive, opportunity, plan, preparation, identity, or absence of mistake or accident] with respect to the claims or defenses at issue in this case. Such evidence may not be considered for any other purpose whatsoever. You cannot use

evidence of similar acts to reflect on \_\_\_\_\_\_\_\_\_\_\_\_\_’s character.

INSTRUCTION No. \_\_\_

Members of the jury, you are about to begin your final duty, which is to decide the fact issues in this case. Before you do that, I will instruct you on the law. Please pay close attention. You need not take notes. You will be given a copy of these instructions to take with you when you retire to begin your deliberations.

You have now heard all of the evidence in this case. My duty at this point is to instruct you on the rules of law that you must follow and apply in arriving at your decision. It is your duty to accept these instructions of law and to apply them to the facts as you determine them, just as it has been my duty to preside over the trial and to decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. You will receive a copy of these instructions to take with you into the jury room.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any view of the law other than the one I give you.

Your role is to consider and decide the fact issues that are in this case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the evidence; you determine the credibility or believability of the witnesses; you resolve whatever conflicts may be in the testimony; you draw whatever reasonable inferences and conclusions you decide to draw from the facts as you have determined them; and you determine the weight of the evidence.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions, is not evidence. Nor is anything I may have said during the trial or may say during these instructions about a fact issue to be taken instead of your own independent recollection. What I say is not evidence. It is your own independent recollection of the evidence that controls. Similarly, remember that a question put to a witness is never evidence. Only the answer is evidence. However, you may not consider any answer that I directed you to disregard or that I directed struck from the record. If there is any difference or contradiction between what any lawyer has said and what you decide the evidence showed, or between anything I may have said and what you decide the evidence showed, it is your view of the evidence—not the lawyers’ and not mine—that controls.

Because you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not indicative of my views of what your decision should be as to whether [Plaintiff] or [Defendant] has presented the more convincing evidence.

I also ask you to draw no inference from the fact that upon occasion I asked questions of certain witnesses. These questions were intended only for clarification or to move things along. They were not intended to suggest any opinions on my part as to the verdict you should render or whether any of the witnesses may have been more credible or less credible than any of the other witnesses. It is important that you understand that I wish to convey no opinion as to the verdict you should render in this case, and that if I did convey such an opinion, you would not be obliged in any way to follow it.

In determining the facts, you must weigh and consider the evidence without regard to sympathy, prejudice, or passion for or against any party. I will later discuss with you how to pass upon the credibility—or believability—of the witnesses.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist you in understanding the evidence and the parties’ contentions.

You have now heard all of the evidence in this 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.

INSTRUCTION No. \_\_\_

*EQUAL STANDING*

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.

INSTRUCTION No. \_\_\_

*THEORIES OF RECOVERY*

In this civil action, Plaintiff \_\_\_\_\_\_\_\_\_\_\_\_\_\_ seeks compensation from Defendant(s) \_\_\_\_\_\_\_\_\_\_\_ for damages that Plaintiff claims were caused by \_\_\_\_\_\_\_\_\_\_.

[Plaintiff’s summary of theories for recovery must be individually tailored for each case.]

INSTRUCTION No. \_\_\_

*DENIAL—AFFIRMATIVE DEFENSES*

Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ denies Plaintiff’s contentions under the claim of \_\_\_\_\_\_\_\_\_\_\_\_\_, and Defendant claims that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[Defendant’s summary of denials and affirmative defenses must be individually tailored for each case.]

INSTRUCTION No. \_\_\_

*PREPONDERANCE OF THE EVIDENCE*

It is a general rule in civil cases that a Plaintiff must prove every essential part of his or her claims by a preponderance of the evidence. Similarly, a Defendant generally must prove every essential part of his or her affirmative defenses by a preponderance of the evidence in a civil case.

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.

INSTRUCTION NO. \_\_\_

*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.

[In this connection, you will note that some of the instructions apply to one Plaintiff, while other instructions apply to all Plaintiffs.]

[Source: UJI 13-115 NMRA]

INSTRUCTION NO. \_\_\_

*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, any other is liable. Each Defendant is entitled to fair consideration of his own defense.

You will decide each Defendant's case separately, as if each were a separate lawsuit.

[Source: UJI 13-116 NMRA]

INSTRUCTION No. \_\_\_

*CORPORATION AS A PARTY*

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 that officer’s or employee’s employment, is the act or omission of the corporation.

[Source: NM UJI 13-409 NMRA]

INSTRUCTION No. \_\_\_

*CORPORATION IMPARTIALITY*

The [name of Plaintiff, Defendant, or other party] in this case is a corporation. 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.

[Source: UJI 13-114 NMRA]

INSTRUCTION No. \_\_\_

*BIFURCATED TRIAL*

This trial has been divided into two stages. We are now in the first stage of the trial, in which you will consider whether Defendant \_\_\_\_\_\_\_\_\_\_\_ violated Plaintiff’s rights or committed the tort of \_\_\_\_\_\_\_\_\_\_ against Plaintiff. If your verdict during the first stage of the trial is that Defendant \_\_\_\_\_\_\_\_\_\_\_ violated Plaintiff’s constitutional rights or committed the tort of \_\_\_\_\_\_\_, then the trial will proceed to a second stage, in which you will be asked to determine what damages, if any, should be awarded to Plaintiff.

INSTRUCTION No. \_\_\_

*BURDEN AS TO EACH ELEMENT OF CLAIM*

Plaintiff brings a claim of \_\_\_\_\_\_\_\_\_\_\_ against Defendant(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under the law of \_\_\_\_\_\_\_\_\_\_\_\_\_. In order for Plaintiff to prevail on his \_\_\_\_\_\_ claim with respect to Defendant \_\_\_\_\_\_\_\_\_\_\_, Plaintiff must prove each of the following elements by a preponderance of the evidence:

[Elements and definitions of claims and defenses must be individually tailored for each case.]

INSTRUCTION No. \_\_\_

*EVIDENCE—DEFINED*

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, the stipulations that the lawyers agreed to,

and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers’ statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial, I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

[Source: 10th Cir. Pattern Criminal § 1.06 (appropriate for civil cases as well)]

INSTRUCTION No. \_\_\_

*EVIDENCE—DIRECT AND CIRCUMSTANTIAL—INFERENCES*

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of facts or circumstances that give rise to a reasonable inference of the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

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 facts which have been proved.

By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in this case.

[Source: 10th Cir. Pattern Criminal § 1.07 (applicable to civil cases)]

STOCK INSTRUCTION No. \_\_\_

*WEIGHT OF EVIDENCE*

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.

INSTRUCTION No. \_\_\_

*IMPEACHMENT OF A WITNESS*

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 witness has been convicted of a crime.]

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

[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.

[Source: UJI 13-2004 NMRA]

INSTRUCTION NO. \_\_\_

*EXPERT TESTIMONY*

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.

[Source: UJI 13-213 NMRA and Fifth Circuit Civil § 2.13]

INSTRUCTION NO. \_\_\_

*MEDICAL WITNESS*

A medical witness may testify about statements concerning a person’s medical history and condition that were made for purposes of diagnosis or treatment. Such statements are not evidence of their own truth, but they may be considered to show the information upon which the witness’s diagnosis or medical opinion was based. To whatever extent the opinion of the witness is based upon such statements, you may consider the trustworthiness of the statements in determining the weight to be given to the witness’s opinion.

INSTRUCTION NO. \_\_\_

*SUMMARIES AND CHARTS (not received in evidence)*

Certain charts and summaries have been shown to you to help explain the evidence in this case. Their only purpose is to help explain the evidence. These charts and summaries are not evidence or proof of any facts.

[Source: 10th Cir. Pattern Criminal § 1.41 (for demonstrative evidence not received in evidence,

applicable for civil cases)]

INSTRUCTION NO.

*DEMONSTRATIVE EVIDENCE - SPECIFIC EXHIBITS*

Exhibit [insert number] is an illustration. It is a party’s [description or picture or model] to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.

[Source: Fifth Cir. Pattern § 2.8 (specific exhibits)]

INSTRUCTION NO. \_\_\_

*CAUSATION*

An act, omission, or condition is a “cause” of injury or harm if it contributes to bringing about the injury or harm, and if the injury or harm would not have occurred without it. It need not be the only explanation for the injury or harm, 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, omission, or condition, nonetheless, must be reasonably connected as a link to the injury or harm.

INSTRUCTION NO. \_\_\_

*DETERMINE LIABILITY BEFORE DAMAGES*

If you find for the Plaintiff on one or more of his claims, and against one or more Defendants on their defenses, you must then decide the issue of the Plaintiff’s damages. 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.

INSTRUCTION NO. \_\_\_

*NOMINAL DAMAGES*

If you find that Plaintiff is entitled to a verdict in accordance with these instructions, but find that the Plaintiff has sustained insignificant actual damages, then you may return a verdict for the Plaintiff in some nominal sum such as one dollar.

If you find in favor of the Plaintiff, but you find that the Plaintiff’s damages have no monetary value, then you must return a verdict for the Plaintiff for a nominal amount such as one dollar.

[The award of a nominal sum on account of actual damages would not prevent you from awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these circumstances.]

[Source: *Long v. Shillinger*, 927 F.2d 525 (10th Cir. 1991); UJI 13-1832 NMRA]

INSTRUCTION NO. \_\_\_

*COMPENSATORY DAMAGES MUST BE REASONABLE*

If you find that the Defendant is liable to the Plaintiff, then you must determine an amount that is fair compensation for all of the Plaintiff’s damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the Plaintiff whole—that is, to compensate the Plaintiff for the damage that the Plaintiff has suffered.

You may award compensatory damages only for injuries that the Plaintiff proves were proximately caused by the Defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the Plaintiff’s damages, no more and no less. You should not award compensatory damages for speculative injuries, but only for those injuries that the Plaintiff has actually suffered or that the Plaintiff is reasonably likely to suffer in the future.

You must use sound discretion in fixing an award of damages. Your verdict must be based upon proof and not upon speculation, guess, or conjecture. Further, sympathy or prejudice for or against a party should not affect your verdict and is not a proper basis for determining damages.

[Source: UJI 13-1802 NMRA (modified); Fifth Circuit Pattern § 15.2]

INSTRUCTION NO. \_\_\_

*DOUBLE RECOVERY*

You must not award compensatory damages more than once for the same injury. For example, if the Plaintiff prevails on all claims and establishes a dollar amount for the 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 what was lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the Plaintiff fully for all injuries.

[With respect to punitive damages, you may make separate awards on each claim that

Plaintiffs have proven.]

[Source: Fifth Circuit pattern § 15.14 (modified); *see Hale v. Basin Motor Co.*, 110 NM 314

(1990).]

INSTRUCTION NO. \_\_\_

*COMPENSATORY DAMAGES*

If you should decide in favor of Plaintiff on the question of liability, you must then fix the amount of money that will reasonably and fairly compensate Plaintiff for any of the following elements of damages proved by Plaintiff to have resulted from the wrongful conduct as claimed:

1. The value of lost earnings and the present cash value of earning capacity reasonably certain to be lost in the future.

2. The reasonable expense of necessary medical care, treatment, and services received, and the present cash value of the reasonable expenses of medical care, treatment, and services reasonably certain to be received in the future.

3. The reasonable value of necessary nonmedical expenses, which have been required as a result of the injury, and the present cash value of such nonmedical expenses reasonably certain to be required in the future.

4. The nature, extent, and duration of the injury.

5. The pain and suffering experienced, and reasonably certain to be experienced in the future, as a result of the injury.

The guide for you to follow in determining compensation for pain and suffering, if any, is the enlightened conscience of impartial jurors acting under the sanctity of your oath to compensate Plaintiff with fairness to all parties to this action.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based upon proof and not upon speculation, guess, or conjecture. On the other hand, the law does not require that Plaintiff prove the amount of his 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.

[Damages instructions must be individually tailored for each case.]

INSTRUCTION NO. \_\_\_

*FUTURE DAMAGES*

If you have found that Plaintiff is entitled to damages arising in the future, you must determine the amount of such damages you believe would fairly compensate Plaintiff for such future 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 people work all their lives and others do not, and a person’s earnings may remain the same or may increase or decrease in the future.]

[Source: UJI 13-1821 NMRA (bracketed); Fifth Circuit Pattern § 15.3 (modified)]

INSTRUCTION NO. \_\_\_

*FUTURE DAMAGES – DISCOUNT TO PRESENT VALUE*

In fixing the amount you may award for damages arising in the future, you must reduce the total of such damages by making allowance for the fact that any award you might make would, if properly invested, earn interest. You should, therefore, allow a reasonable discount for the earning power of such money and arrive at the present cash value of the total future damages, if any.

Damages for any future pain and suffering are not to be so reduced.

[Source: UJI 13-1822 NMRA]

INSTRUCTION NO. \_\_\_

*MITIGATION*

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

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

[Source: UJI 13-1811 NMRA]

INSTRUCTION NO. \_\_\_

*PUNITIVE DAMAGES*

You may consider punitive damages only if you find that Plaintiff should recover compensatory or nominal damages. You may award punitive damages if the Plaintiff has proved that Defendant[s] acted with malice or willfulness, or with reckless indifference to the safety or rights of others. Malicious conduct is the intentional doing of an 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.

Punitive damages are awarded for the limited purpose of punishment and to deter others from the commission of like offenses. The law does not require you to award punitive damages. However, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. 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 of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. The amount awarded, if any, must be reasonable and not disproportionate to the circumstances.

[Source: UJI 13-1827 NMRA (modified); Fifth Circuit Pattern § 15.13 (modified)]

STOCK INSTRUCTION NO. CIV.18E

*LIFE EXPECTANCY*

According to a table of mortality, the life expectancy of [name] is [number] additional ears. This figure is not conclusive. It is the average life expectancy of persons who have reached that age. This figure may be considered by you in connection with other evidence relating to the probable life expectancy of [name], including evidence of [name’s] occupation, health, habits, and other activities, bearing in mind that some persons live longer and some shorter than the average.

INSTRUCTION NO. \_\_\_

*PUNITIVE DAMAGES AND VICARIOUS LIABILITY*

The employer **[**principal**]** is liable for punitive or exemplary damages only when the employer **[**principal**]** has in some way authorized, participated in, or ratified the acts of the employee **[**agent**]**.

\*\*\*\*\*\*\*\*\*\*

*[ALTERNATIVES for Vicarious Liability*]

Additionally, if you find that the conduct of \_\_\_\_\_\_\_\_\_\_ (name of agent or employee of party on whose conduct vicarious claim for punitive damages is based) was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], you may award punitive damages against \_\_\_\_\_\_\_\_\_\_ (name of party against whom vicarious liability for punitive damages is asserted) if:

(A) \_\_\_\_\_\_\_\_\_\_ (name of agent or employee) was acting in the scope of [his] [her] employment by \_\_\_\_\_\_\_\_\_\_ (name of party) and had sufficient discretionary or policy-making authority to speak and act for [him] [her] [it] with regard to the conduct at issue, independently of higher authority; [or if]

(B) \_\_\_\_\_\_\_\_\_\_ (name of party) in some [other] way [authorized,] [participated in] [or] [ratified] the conduct of \_\_\_\_\_\_\_\_\_\_ (name of agent or employee).

[Source: UJI 13-1827 NMRA; *Albuquerque Concrete Coring Co., Inc.*,118 NM 140 (1994)]

INSTRUCTION NO. \_\_\_

*DAMAGES - MULTIPLE DEFENDANTS (Where fault is not apportioned)*

If you find that only one Defendant is responsible for a particular injury, then you must award damages for that injury only against that Defendant. If you find that Plaintiff is entitled to recover damages against more than one Defendant, you must return a verdict for compensatory damages in one single sum jointly against the Defendants whom you find to be liable.

**[**If you find that punitive damages are recoverable, they are to be assessed individually against any Defendant or Defendants you find liable therefor.**]**

[Source: UJI 13-1824 NMRA; Fifth Circuit Pattern Instructions § 15.14 (modified); *Gallegos v. Citizens Ins. Agency*, 108 N.M. 722, 727 (1989)]

INSTRUCTION NO. \_\_\_

*CLOSING ARGUMENTS*

After these instructions on the law governing the case, the lawyers may make closing arguments on the evidence and the law. These summaries can be of considerable assistance to you in arriving at your decision, and you should listen carefully. You may give them such weight as you think proper. However, neither these closing arguments nor any other remarks made by the attorneys during the course of the trial are to be considered by you as evidence or as a correct statement of the law, if contrary to the law given in these instructions.

INSTRUCTION NO.

*DUTY TO DELIBERATE*

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 of 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 that 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.

[Source: Fifth Circuit Pattern Instructions § 2.11; UJI 13-2001 NMRA]

INSTRUCTION NO. \_\_\_

*JURY ACTS AS A BODY*

The jury acts as a body. Therefore, on every question that you must answer, it is necessary that all of you participate regardless of the vote on another question. Before a question can be answered, all of you must agree upon the answer.

[Source: UJI 13-2006 NMRA]

INSTRUCTION NO. \_\_\_

*FOREPERSON*

Upon retiring to the jury room, and before commencing your deliberations, you will first elect a foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

You will be given the Court’s instructions and a verdict form. In this case it will be necessary for you to answer the preliminary questions presented to you on the verdict form.

If you recess during your deliberations, follow all of the instructions that I have given you about your conduct during the trial.

If, during your deliberations, you should desire to communicate with me, please put your message or question in writing on one of the forms that my court staff will provide to you. Your note should be signed by the foreperson and then passed to the court security officer who will bring it to my attention. Never attempt to communicate with me except by a written note signed by your foreperson. I will respond as promptly as possible, either in writing or by having you returned to the courtroom. I will always first disclose to the attorneys your question and my response before I answer your question. If I reply to you in writing, please leave both the message and the reply in the jury room. These documents should not be thrown away, even at the conclusion of your deliberations.

Bear in mind always that you are not to reveal to me or to any person how you stand, numerically or otherwise, until you have reached a unanimous verdict. Do not disclose any vote count in any communications with the Court.

After you have reached your unanimous verdict, your foreperson is to fill in the answers to the questions on the verdict form and date and sign the form. The completed, signed verdict form should then be placed in the envelope that will be provided to you. After completing the verdict form, please also send a note to the court security officer indicating that you have reached a verdict and are ready to return to the courtroom. Again, any notes you pass to the court security officer should not state what your verdict is or how you have voted.

[Source: UJI 13-2009 NMRA; Fifth Cir. Pattern Instruction § 3.1 (General Instructions for Charge); *Bledsoe v. Garcia*, 742 F.2d 1237, 1244 (10th Cir. 1984) (unanimous jury verdict has been used in federal court for over 200 years)]

DATED this \_\_\_\_\_ day of [month], [year].

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**STEPHAN M. VIDMAR**

**United States Magistrate Judge**

**Presiding by Consent**