

# HONORABLE MARTHA VÁZQUEZ

## Civil Stock Instruction Index

Case: \_\_\_\_\_

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## INSTRUCTION NO. 1

Members of the jury, now that you have heard all the evidence [**and the arguments of the attorneys**], it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

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

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

**SOURCE:** 9th Cir. Pattern Jury Instructions (Civil) § 3.1 (2001).

**INSTRUCTION NO. 2**

It is a general rule in civil cases that a party seeking a recovery [**or a party relying upon a defense**] has the burden of proving every essential element of the claim [**or defense**] by a preponderance of the evidence ~~by the greater weight of the evidence~~.

To prove by a preponderance of the evidence ~~by the greater weight 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 on negligence, 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.

**SOURCE:** U.J.I. Civil No. 13-304, NMRA 2002.

**COURT MODIFICATIONS:** Noted.

**INSTRUCTION NO. 3**

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

**SOURCE:** 5th Cir. Pattern Jury Instructions (Civil) § 2.13 (1999).

**INSTRUCTION NO. 4**

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.

**SOURCE:** U.J.I. Civil No. 13-1902, NMRA 2002.

### **INSTRUCTION NO. 5**

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of any witnesses; (2) the exhibits which have been received into evidence; and (3) any facts to which the lawyers have agreed or stipulated.

The production of evidence in court is governed by rules of law. From time to time it has been my duty, as judge, to rule on the evidence. You must not concern yourselves with the reasons for these rulings. You should not consider what would or would not have been the answers to the questions which the court ruled could not be answered.

**SOURCE:** 1st paragraph: 9th Cir. Pattern Jury Instructions (Civil) § 3.2 (2001).  
2nd paragraph: U.J.I. Civil No. 13-307, NMRA 2002.

## INSTRUCTION NO. 6

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

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

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

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. **[In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.]**

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

**SOURCE:** 9th Cir. Pattern Jury Instructions (Civil) § 3.3 (2001).

**INSTRUCTION NO. 7**

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. 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 unduly 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) § 2.21 (1999).

**INSTRUCTION NO. 8**

A fact may be proved by circumstantial evidence. 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.

**SOURCE:** U.J.I. Civil No. 13-308, NMRA 2002.

**INSTRUCTION NO. 9**

You must consider only the evidence in this case. However, you may draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. You may make deductions and reach conclusions that reason and common sense lead you to make from the testimony and evidence.

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.

**SOURCE:** 5th Cir. Pattern Jury Instructions (Civil) § 2.18 (1999).

**COURT MODIFICATIONS:** Third paragraph deleted.

### **INSTRUCTION NO. 10**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, 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.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

**SOURCE:** 9th Cir. Pattern Jury Instructions (Civil) § 1.8 (2001).

**INSTRUCTION NO. 11**

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 witnesses], [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:** U.J.I. Civil No. 13-2004, NMRA 2002.

## **INSTRUCTION NO. 12**

Discrepancies in a witness' testimony or between a witness' testimony and that of other witnesses, if there were any, do not necessarily mean that any witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. You should consider whether a discrepancy pertains to an important matter or only to something trivial.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

**SOURCE:** California Jury Instructions- Civil, Book of Approved Jury Instructions, 2.21 (9th ed.)

**COURT MODIFICATIONS:** Underline portion added.

**INSTRUCTION NO. 13**

Certain testimony will now be presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness' testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers will be read **[shown]** to you today. This deposition testimony is entitled to the same consideration **[and is to be judged by you as to credibility] [and weighed and otherwise considered by you insofar as possible in the same way]** as if the witness had been present and had testified from the witness stand in court.

**SOURCE:** 5th Cir. Pattern Jury Instructions (Civil) § 2.23 (1999).

**INSTRUCTION NO. 14**

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.

**SOURCE:** U.J.I. Civil No. 13-205, NMRA 2002.

### **INSTRUCTION NO. 15**

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field—~~he is~~ called an expert witness—is permitted to state an opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.<sup>1</sup>

**SOURCE:** 5th Cir. Pattern Jury Instructions (Civil) § 2.19 (1999).

**COURT MODIFICATIONS:** Noted

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<sup>1</sup>This charge may be elaborated on in the following manner:

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that ~~he~~ the witness testifies regularly as an expert witness and **[his or her]** income from such testimony represents a significant portion of **[his or her]** income.

**INSTRUCTION NO. 16**

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.

**SOURCE:** UJI Civil No. 13-1801, NMRA 2002.

### INSTRUCTION NO. 17

If you should decide in favor of the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate **[him] [her]** for any of the following elements of damages proved by the plaintiff to have resulted from the negligence **[wrongful conduct]**:

(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 **[including prosthetic devices and cosmetic aids] [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 **[including disfigurement]**.

(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 the plaintiff with fairness to all parties to this action.

(6) The aggravation of any preexisting ailment or condition, but you may allow damages only for the aggravation itself and not for the preexisting ailment or condition.

(7) The present cash value of earning capacity reasonably certain to be lost in the future after the plaintiff has reached the age of eighteen (18) years.

(8) The reasonable value of the services of **[his wife] [her husband]** of which the family has been deprived **[and the present cash value of services of [his wife] [her husband] of which the family is reasonably certain to be derived in the future]**.

Whether any of these elements of damages has been proved by the evidence is for you to determine. 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:** U.J.I. Civil Nos. 13-1802 through 13-1810, NMRA 2002.

**COURT MODIFICATIONS:** None; Instructions combined.

**INSTRUCTION NO. 18**

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.]**

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:** U.J.I. Civil No. 13-1821, 13-1822 NMRA 2002.

**COURT MODIFICATIONS:** None; Instructions combined.

**INSTRUCTION NO. 19**

According to a table of mortality, the life expectancy of persons aged \_\_ years is \_\_\_\_\_ additional years. 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 \_\_\_\_\_, including evidence of **[his]** **[her]** occupation, health, habits, and other activities, bearing in mind that some persons live longer and some live shorter than the average.

**SOURCE:** U.J.I. Civil No. 13-1831, NMRA 2002.

## INSTRUCTION NO. 20

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate)) to avoid or minimize those damages.

If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which he could have avoided through reasonable effort. If you find by a preponderance of the evidence the plaintiff unreasonably failed to take advantage of an opportunity to lessen **[his or her]** damages, you should deny **[him or her]** recovery for those damages which **[he or she]** would have avoided had he taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing **[his or her]** damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce **[his or her]** damages. However, **[he or she]** is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of **[his or her]** failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied **[his or her]** burden of proving that the plaintiff's conduct was not reasonable.

**SOURCE:** 5th Cir. Pattern Jury Instructions (Civil) § 15.15 (1999).

**INSTRUCTION NO. 21**

If you find that \_\_\_\_\_ [*name of party making claim for punitive damages*] should recover compensation for damages, and if you further find that the conduct of \_\_\_\_\_ [*name of party whose conduct gives rise to a claim for punitive damages*] was **[malicious], [reckless], [wanton], [oppressive], or [fraudulent]**, then you may award punitive damages.

Such additional damages are awarded for the limited purpose 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 injury and to the damages given as compensation and not disproportionate to the circumstances.

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

**[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.]**

**SOURCE:** U.J.I. No. 13-861, NMRA 2002.

## **INSTRUCTION NO. 22**

When you begin your deliberations, you should elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

The attitude and conduct of jurors at the beginning of their deliberations are very important. It is rarely helpful for a juror, on entering the jury room, to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and one may hesitate to change a position even if shown that it is wrong. Remember that you are not partisans or advocates in this matter. You must be impartial judges of the facts.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

**SOURCE:** 9th Cir. Pattern Jury Instructions (Civil) § 4.1 (2001), except fourth paragraph, which is California Jury Instructions- Civil, Book of Approved Jury Instructions, 15.31 (9th ed.).

**COURT MODIFICATIONS:** None; Instructions combined.

**INSTRUCTION NO. 23**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

**SOURCE:** 9th Cir. Pattern Jury Instructions (Civil) § 4.3 (2001).

**COURT MODIFICATIONS:** Portion deleted.

**INSTRUCTION NO. 24**

Nothing said in these instructions and nothing in any form of verdict, which has been prepared for your convenience, is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

**SOURCE:** O'Malley, Grenig & Lee, Federal Jury Practice and Instructions § 20.01 (5th ed. 2000).

**COURT MODIFICATIONS:** Excerpted from longer instruction.

### **INSTRUCTION NO. 25**

A form of special verdict has been prepared for your convenience. You will take this form into the jury room. **[Read special verdict form.]**

You will note that each of the three interrogatories or questions calls for a “Yes” or “No” answer. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question. As you will note from the wording of the questions, it will not be necessary to consider or answer question (2) if your answer to question (1) is “No.” Nor will it be necessary for you to consider or answer question (3), unless your answer to both questions (1) and (2) is “Yes.”

Accordingly, if your answer to either questions (1) or (2) is “No,” the foreperson will date and sign the special verdict, without answering question (3). On the other hand, if your answer to both questions (1) or (2) is “Yes,” then you will answer question (3). The foreperson will then date and sign the special verdict as so completed; and you will then return with it to the courtroom.

**SOURCE:** O’Malley, Grenig & Lee, Federal Jury Practice and Instructions § 106.05(5th ed. 2000) (updated by the 2001 pocket part).

**COURT MODIFICATIONS:** Portion deleted; to be modified to conform to case.