

800.73 INVASION OF PRIVACY—DISCLOSURE OF PRIVATE IMAGES—
ACTUAL DAMAGES.

NOTE WELL: This instruction¹ is designed to be used with N.C.P.I.—Civil 800.72 ("Invasion of Privacy—Disclosure of Private Images") and N.C.P.I.—Civil 800.74 ("Invasion of Privacy—Disclosure of Private Images—Liquidated Damages").

The (*state number*) issue reads:

"What amount is the plaintiff entitled to recover from the defendant for the disclosure of the private image(s) of the plaintiff?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, then you must determine whether the plaintiff is entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages caused by the wrongful conduct of the defendant.

(Here give appropriate instructions as to the type of damage claimed if supported by the evidence, e.g.,

N.C.P.I.—Civil—810.04 ("Personal Injury Damages—Medical Expenses"),

N.C.P.I.—Civil—810.06 ("Personal Injury Damages—Loss of Earnings"),

N.C.P.I.—Civil—810.08 ("Personal Injury Damages—Pain and Suffering"), etc.)¹

I instruct you that if you reach this issue, your decision must be based on the evidence and the rules of law I have given you with respect to the measure of damages. You are not required to accept the amount of damages suggested by the parties or their attorneys. Your award must be fair and just. You should remember that you are not seeking to punish

either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, the amount of actual damages proximately caused by the wrongful conduct of the defendant, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write "None" in the blank space provided.

1. This issue is meant to aid the trial court judge in calculating liquidated damages, as set forth in N.C.G.S. § 14-190.5A(g)(1), in the event that actual damages are less than liquidated damages. Liquidated damages are to be computed at a rate of one thousand dollars (\$1,000) per day for each day of the violation or in the amount of ten thousand dollars (\$10,000), whichever is higher.

2. N.C.G.S. § 14-190.5A(g)(2) also provides for the possibility of recovery of punitive damages. In the event that an instruction is submitted on punitive damages, there will be separate issues as provided in N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and N.C.P.I.—Civil 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount of Award").