

800.83 INVASION OF PRIVACY—USE OF UNMANNED AIRCRAFT SYSTEM—  
ACTUAL DAMAGES.

*NOTE WELL: If the plaintiff brings a claim based on surveillance (section 15A-300.1(b)(1)) and publishing or otherwise publicly disseminating photographs or videos (section 15A-300.1(b)(2)), the judge may consider a special interrogatory to have the jury separate damages for each basis.*

*NOTE WELL: If, prior to submission to the jury, the plaintiff elects to recover five thousand dollars (\$5,000) for each photograph that is published or otherwise disseminated pursuant to this statute, then this instruction need not be given. However, the plaintiff may seek both liquidated damages and actual damages, and defer election until after the jury's verdict. The jury should not be instructed on the amount of liquidated damages.<sup>1</sup>*

The *(state number)* issue reads:

"What amount is the plaintiff entitled to recover from the defendant for the unauthorized use of an unmanned aircraft system to [surveil] [photograph] the plaintiff?"

If you have answered the *(state number)* issue "Yes" in favor of the plaintiff, then the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff.

The plaintiff may also be 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 proximately caused by the wrongful conduct of the defendant. Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage]

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or some other similar injurious result. There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's wrongful conduct was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's wrongful conduct was a proximate cause.

*(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.)*

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 a nominal sum such as "One Dollar" in the blank space provided.

N.C.P.I.—Civil 800.83

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DAMAGES.

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N.C.G.S. § 15A-300.1

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1. N.C.G.S. § 15A-300.1(e) provides that a plaintiff may elect, in lieu of actual damages, to recover five thousand dollars (\$5,000) for each photograph or video that is published or otherwise disseminated pursuant to this statute, as well as reasonable costs and attorneys' fees and injunctive or other relief as determined by the court. For the instruction used to calculate liquidated damages, see N.C.P.I.—Civil 800.82 (Invasion of Privacy—Use of Unmanned Aircraft System—Number of Photographs).