MALICIOUS PROSECUTION--DAMAGES.

This (*state number*) issue reads:

"What amount is the plaintiff entitled to recover from the defendant for the malicious [criminal] [civil] proceeding?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, 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 the technical damage caused by the wrongful conduct of the defendant.

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 caused by the wrongful conduct of the defendant.

(*Here give appropriate instruction as to type of damage claimed if supported by the evidence, e.g., mental suffering, (N.C.P.I.--Civil 810.30), etc.*).

I instruct you that if you reach this issue,[1] 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

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[1] If counsel makes a *per diem* argument, modify this portion of the instruction in accordance with N.C.P.I.--Civil 810.51.

MALICIOUS PROSECUTION--DAMAGES.   (Continued.)

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 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.