

1 **13-843A. Special or consequential damages.**

2 In addition to direct damages, _____ (*name of party asserting breach*)
3 also seeks to recover damages for _____ (*describe damages alleged to have*
4 *happened as the result of special circumstances, beyond the ordinary course of events, that the*
5 *breaching party had reason to know*).

6 To recover for these alleged damages, _____ (*name of party asserting breach*)
7 must prove the following:

8 1. When the contract was made, _____ (*name of opposing party*) had
9 reason to know that these damages would probably result from ~~[[his][her][its]]~~ _____'s
10 (*name of opposing party*) breach;

11 2. These damages were in fact caused by _____ (*name of opposing*
12 *party*)~~['s]~~'s breach of contract; and

13 3. The amount of damages.

14 USE NOTES

15 This instruction should be inserted into Part 2 of UJI 13-843 NMRA if the court determines
16 as a matter of law that any of the elements of damages being sought constitute consequential
17 damages (also called special damages). As drafted, this instruction is intended for use in common-
18 law contracts cases.

19 [Adopted by Supreme Court Order No. 15-8300-005, effective for all cases filed or pending on or
20 after December 31, 2015; as amended by Supreme Court Order No. 18-8300-013, effective for all
21 cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No.
22 S-1-RCR-2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — In *Sunnyland Farms v. Cent. N.M. Elec. Coop., Inc.*, 2013-NMSC-
2 017, ¶ 16, 301 P.3d 387, the New Mexico Supreme Court clarified the rule for determining whether
3 a party may recover consequential damages in a contract case. The Court held [“]“that the proper
4 test for consequential damages in New Mexico is the *Hadley [v. Baxendale]*, 156 Eng. Rep. 145, 9
5 Ex. 341 (1854)] standard as interpreted in Restatement (Second) of Contracts Section 351. [“]” *Id.*
6 Under this test, [“]“a defendant is liable only for those consequential damages that were objectively
7 foreseeable as a probable result of [~~his or her~~][defendant’s] breach when the contract was made.[“]”
8 *Id.*
9 [Adopted by Supreme Court Order No. 15-8300-005[~~, effective December 31, 2015~~]; as amended
10 by Supreme Court Order No. 18-8300-013[~~, effective for all cases pending or filed on or after~~
11 ~~December 31, 2018~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]