

IN THE IOWA DISTRICT COURT IN AND FOR WINNESHIEK COUNTY

KEVIN MOELLERS AND GAYLEEN	)	
MOELLERS,	)	
	)	CASE NO. LACV026203
Plaintiffs,	)	
vs.	)	
	)	DEFENDANT'S PROPOSED JURY
J.P. FITZGERALD, INC., d/b/a	)	INSTRUCTIONS
FITZGERALD, INC.,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the Defendant and hereby request the following proposed jury instructions.

/s/ David L. Riley

David L. Riley AT0006610

For

SWISHER & COHRT, P.L.C.

528 West Fourth Street

P.O. Box 1200

Waterloo, IA 50704

Telephone # (319) 232-6555

Fax # (319) 232-4835

Email: riley@s-c-law.com

ATTORNEYS FOR DEFENDANT

Copies EDMS to:

Andrew F. Van Der Maaten  
Scott Lawrence

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

☐ U.S. Mail, prepaid  
☐ Facsimile  
☐ Hand delivery  
☒ EDMS

to each of the attorneys of record herein and any pro se parties at their respective addresses as disclosed in the pleadings as prescribed in Rule 1.442 on the 11<sup>th</sup> day of December, 2018.

/s/ Emily Zeets

Defendant requests the following Iowa Uniform Civil Jury Instructions without significant modification:

<u>No.</u>	<u>Title</u>
100.4	Evidence
100.6	Interrogatories
100.8	Stipulated Testimony
2400.1	Essentials For Recovery
2400.4	Consideration
2400.13	Definition – Implied Contract
2400.14	Definition – Implied Contract As to Compensation

INSTRUCTION NO. 1

Defendant Fitzgerald, Inc. contends Kevin and Gayleen Moellers breached Moellers' contract with Fitzgerald for installation, service and maintenance of the Moellers' dairy equipment by failing to pay Moellers' bill with Fitzgerald, Inc. In order to prevail on this counterclaim, Fitzgerald, Inc. must prove all of the following:

1. That Moellers contracted with Fitzgerald, Inc. for installation, maintenance and service of equipment on the Moellers' dairy farm.
2. That Fitzgerald, Inc. provided the goods and services.
3. That Moellers did not pay the bill.

If Fitzgerald, Inc. has failed to prove any of these propositions, then it is not entitled to recover on its counterclaim for damages. If Fitzgerald, Inc. has proved all of these propositions, then it is entitled to recover damages in the amount determined by you.

INSTRUCTION NO. 2

**Failure to Mitigate.** Under the law a party has a duty to mitigate, or minimize, damages suffered even after another party has breached a contract. Fitzgerald, Inc. contends that Moellers failed to mitigate their damages in this instance. If you find that to be true, you should consider the evidence you heard on that issue in determining the amount of damages, if any, that Moellers are entitled to recover in their claim against Fitzgerald, Inc.

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MOELLERS,

Plaintiffs,

vs.

J.P. FITZGERALD, INC., d/b/a  
FITZGERALD, INC.,

Defendant.

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CASE NO. LACV026203

SPECIAL VERDICT FORM #3

We, the jury, find in favor of the defendant, Fitzgerald, Inc., on its counterclaim, and fix the amount of recovery on that counterclaim as follows:

Amount owed to Fitzgerald, Inc. by Kevin and  
Gayleen Moellers for goods and services rendered

\$ \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

\*\*To be signed by the jurors agreeing to the verdict after six hours or more of deliberation.

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MOELLERS,

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FITZGERALD, INC.,

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CASE NO. LACV026203

SPECIAL VERDICT FORM #4

We, the jury, find in favor of the plaintiffs on the counterclaim of Fitzgerald, Inc.

\_\_\_\_\_  
FOREPERSON\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

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Juror\*\*

\_\_\_\_\_  
Juror\*\*

\*\*To be signed by the jurors agreeing to the verdict after six hours or more of deliberation.