**24.04A DEFENDANT’S ANTICIPATORY BREACH BY REPUDIATION**

[Plaintiff] claims that [defendant] breached the contract by indicating in advance that [he she it] would not perform [his her its] future obligations under the contract. [Defendant] denies this claim.

A party breaches a contract if the party clearly indicates in advance that the party will not or cannot perform its future contractual obligations. Words or conduct that are ambiguous, or that merely raise doubts about a party’s future performance, are not enough to constitute a breach of the contract.

You must decide if it is more likely true than not true that [defendant’s] words or conduct, as reasonably interpreted, clearly indicated that [he she it] would not or could not perform [his her its] future obligations under the contract. If so, [[defendant] breached the contract, and you must determine the amount of [plaintiff’s] damages] [you must decide whether [defendant] is excused for indicating that [he she it] would not perform]. I will instruct you on how to do this in a moment.

Otherwise, [defendant] did not breach the contract, and your verdict must be for [defendant].

**Use Note**

This instruction should be given when plaintiff claims that the defendant breached the contract through anticipatory repudiation. The final bracketed language should be used if the defendant has an affirmative defense.

**Comment**

A party commits an anticipatory breach if the party’s words or actions indicate its intent not to perform the contract in the future. *State, Dep’t of Natural Resources v. Alaskan Crude Corp.*, 441 P.3d 393, 400 (Alaska 2018). The party’s words or conduct must be sufficiently positive to be reasonably interpreted to mean that the party will not or cannot perform. *Id*. *See also* *Anchorage Chrysler Center, Inc. v. DaimlerChrysler Motors Corp.*, 221 P.3d 977, 986 (Alaska 2009); *K&K Recycling, Inc. v. Alaska Gold Co*., 80 P.3d 702, 715 (Alaska 2003); *Drake v. Wickwire*, 795 P.2d 195, 197-98 (Alaska 1990).

A party to a contract may breach by failing to provide reasonable assurance of performance when required to do so. *See* the Comment to Instruction 24.04B.