

1 **Appendix Chapter 25.**

2 **Introduction**

3 This appendix provides a sample series of instructions in a case alleging violation of the
4 Unfair Practices Act. The appendix provides one way in which the instructions addressing such a
5 claim could be structured. The appendix is illustrative and does not preclude other approaches,
6 provided the general design reflected in the Uniform Jury Instructions is followed. For purposes
7 of this example, preliminary jury instructions (such as those found in Chapter 1) and general
8 instructions (such as those found in Chapters 2, 3, and 20) have not been included. These
9 instructions have been modified from the Uniform Jury Instructions where appropriate to reflect
10 the issues in dispute in the fact pattern.

11 **Statement of Facts**

12 Joseph and Kathryn Romero purchased a Ford Fiesta from Desert Auto Sales. The car was
13 sold as a “new demonstrator.” Several months after the purchase, the paint on the passenger side
14 front fender and door began to fade. The Romeros learned that the car had been in a crash and
15 repairs had been made to the fender and door by Desert Auto Sales before their purchase of the
16 car. The Romeros took the car to another auto dealer, who said he would value the car at \$13,000
17 if it were undamaged, but because it had been in a collision and needed a new paint job, he would
18 value it at \$10,500. The Romeros had the car repainted at a cost of \$1,000. They testified that they

1 were extremely upset by the dealer’s deceptive tactics and that they were inconvenienced by being
2 unable to use the car during the time it was being repainted.

3 The Romeros brought suit against Desert Auto Sales, alleging violations of the Unfair
4 Practices Act.

5 [13-302A]

6 In this case, Plaintiffs Joseph and Kathryn Romero seek compensation from Defendant
7 Desert Auto Sales for damages that Plaintiffs say were caused by violation of the Unfair Practices
8 Act.

9 [13-302B]

10 The Romeros say, and have the burden of proving, that Desert Auto Sales violated the
11 Unfair Practices Act when it sold the Ford Fiesta to them as a “new demonstrator” and did not
12 disclose that the vehicle had been involved in a collision and had been repaired.

13 [13-302C]

14 Defendant Desert Auto Sales denies that it violated the Unfair Practices Act, because its
15 description of the vehicle disclosed that it had a history of use as a demonstrator before being sold
16 to the Romeros.

17 [13-302E]

1 Related to the above, the Romeros say, and have the burden of proving, that any
2 misrepresentation regarding the Ford Fiesta by Desert Auto Sales was willful.

3 [13-2501]

4 The New Mexico Unfair Practices Act prohibits unfair or deceptive trade practices. For the
5 Romeros to prove that Desert Auto Sales engaged in an unfair or deceptive trade practice, the
6 Romeros must prove that:

7 1. Desert Auto Sales made an oral or written statement or a representation of any kind
8 that was false or misleading; and

9 2. The statement or representation was knowingly made; and

10 3. The statement or representation was of the type that may, tends to, or does deceive
11 or mislead any person.

12 Practices prohibited by the Unfair Practices Act include:

13 ● Representing that goods are new if they are deteriorated or altered;

14 ● Representing that goods are of a particular quality or standard if they are not;

15 ● Failing to state a material fact if doing so deceives or tends to deceive.

16 A statement or representation is false or misleading if it omits a material fact and, as a
17 result, is deceptive or tends to deceive. A fact is material if a reasonable person would attach
18 importance to its existence or nonexistence in determining a choice of action or if the maker of the

1 statement or representation knows or has reason to know that its recipient regards or is likely to
2 regard the fact as important.

3 A false or misleading statement or representation need not actually deceive any person in
4 order to violate the Unfair Practices Act. The Act may be violated by any statement or
5 representation that may, tends to, or does deceive.

6 [13-2503]

7 A claim of unfair or deceptive trade practices under the Unfair Practices Act requires that
8 a statement or representation be “knowingly” made. Knowingly is not the same as intentionally.
9 A statement is knowingly made for purposes of the Unfair Practices Act if:

10 Desert Auto sales was actually aware that the statement was false or misleading when it
11 was made, or

12 Desert Auto Sales, by using reasonable diligence, should have been aware that the
13 statement was false or misleading.

14 [13-2505]

15 In this case, the Romeros claim that Desert Auto Sales’ conduct in violating the Unfair
16 Practices Act was willful. You may consider this portion of the Romeros’ claim only if you first
17 find that Desert Auto Sales violated the Unfair Practices Act. Willful conduct is the intentional
18 doing of an act with knowledge that harm may result.

19 [13-2506]

1 If you decide that Desert Auto Sales violated the Unfair Practices Act, Joseph and Kathryn
2 Romero are entitled to recover the amount of money that will reasonably and fairly compensate
3 them for the following damages proved by them to have resulted from the violation.

4 *(insert brief description of elements of damages claimed)*

5 Whether the Romeros have proved any damages is for you to determine based on the
6 evidence presented at trial.

7 The Romeros are not required to prove damages as a result of the Unfair Practices Act
8 violation in order to recover from Desert Auto Sales. If the Romeros do not prove that they
9 suffered damages as a result of the Unfair Practices Act violation, the law requires the judge to
10 award them the sum of one hundred dollars (\$100) as a consequence of the violation.

11 **Special Verdict Form**

12 **Question No. 1:** Did Desert Auto Sales violate the Unfair Practices Act?

13 Answer: _____ (Yes or No)

14 If the answer to Question No. 1 is “No,” you are not to answer further questions. Your foreperson
15 must sign this special verdict, which will be your verdict for Desert Auto Sales and against the
16 Romeros.

17 If the answer to Question No. 1 is “Yes,” you are to answer Question No. 2.

18 **Question No. 2:** Was Desert Auto Sales’ violation of the Unfair Practice Act willful?

1 Answer: _____ (Yes or No)

2 Regardless of whether the answer to Question No. 2 is “Yes” or “No,” you are to answer Question
3 No. 3.

4

5 **Question No. 3:** Did the Romeros suffer damages as a result of Desert Auto Sales’ violation of the
6 Unfair Practice Act?

7 Answer: _____ (Yes or No)

8 If the answer to Question No. 3 is “Yes,” you are to answer Question No. 4. If the answer to
9 Question No. 3 is “No,” you are not to answer further questions. Your foreperson must sign this
10 special verdict. The judge will award \$100 to the Romeros as a consequence of Desert Auto Sales’
11 violation of the Unfair Practices Act.

12

13 **Question No. 4:** In accordance with the damages instruction given by the court, we find
14 the total amount of damages suffered by the Romeros to be _____. (*Here enter*
15 *the amount of the Romeros’ damages.*)

16

17

18

Foreperson

19 [Adopted by Supreme Court Order No. 22-8300-001, effective February 21, 2022.]