

1 **13-2506. Damages.**

2 If you decide that _____ (*name of defendant*) violated the Unfair Practices Act,
3 _____ (*name of plaintiff*) is entitled to recover the amount of money that will reasonably
4 and fairly compensate _____ (*name of plaintiff*) for the following damages proved by
5 _____ (*name of plaintiff*) to have resulted from the violation.

6 (*insert brief description of elements of damages claimed*).

7 Whether _____ (*name of plaintiff*) has proved any damages is for you to determine based
8 on the evidence presented at trial.

9 _____ (*name of plaintiff*) is not required to prove damages as a result of the Unfair
10 Practices Act violation in order to recover from _____ (*name of defendant*). If _____ (*name of*
11 *plaintiff*) does not prove that _____ (*name of plaintiff*) suffered damages as a result of the Unfair
12 Practices Act violation, the law requires the judge to award the plaintiff the sum of one hundred
13 dollars (\$100) as a consequence of the violation.

14 USE NOTES

15 This instruction is to be used in all cases claiming damages for violation of the Unfair
16 Practices Act (UPA). The elements of damages claimed by the plaintiff (*e.g.*, “the amount of
17 money the plaintiff contributed to the defendant’s allegedly bogus charity”) should be included in
18 the instruction if the court determines that the damages claimed are recoverable under the UPA
19 and are supported by evidence. If the jury finds that the plaintiff’s damages are less than \$100 or
20 that the plaintiff failed to prove any damages, the court must award the plaintiff \$100 as statutory

1 damages. The court may award up to treble damages or three hundred dollars (\$300), whichever
2 is greater, if the jury finds by special verdict that the defendant charged with an unfair or deceptive
3 trade practice or an unconscionable trade practice has willfully engaged in the practice. *See* NMSA
4 1978, § 57-12-10(B) (2005); UJI 13-2505 NMRA.

5 [Adopted by Supreme Court Order No. 22-8300-001, effective for all cases pending or filed on or
6 after February 21, 2022.]

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8 **Committee commentary** – Under the Unfair Practices Act,

9 [a]ny person who suffers any loss of money or property, real or personal, as a result
10 of any employment by another person of a method, act or practice declared
11 unlawful by the Unfair Practices Act may bring an action to
12 recover actual damages or the sum of one hundred dollars (\$100), whichever is
13 greater. Where the trier of fact finds that the party charged with an unfair or
14 deceptive trade practice or an unconscionable trade practice has willfully engaged
15 in the trade practice, the court may award up to three times actual damages or three
16 hundred dollars (\$300), whichever is greater, to the party complaining of
17 the practice.

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19 NMSA 1978, § 57-12-10(B). The New Mexico appellate courts have not yet determined whether
20 “actual damages” recoverable under this provision may encompass non-economic damages such
21 as emotional distress or special damages.

22 **Statutory damages are available in the absence of any actual loss.**

23 Our appellate courts have interpreted Section 57-12-10(B) to allow statutory damages of
24 one hundred dollars (\$100) in the absence of any actual loss. *Lohman v. Daimler-Chrysler Corp.*,
25 2007-NMCA-100, ¶ 44, 142 N.M. 437, 166 P.3d 1091 (citing *Page & Wirtz Construction Co. v.*

1 *Solomon*, 1990-NMSC-063, ¶¶ 22-23, 110 N.M. 206, 794 P.2d 349, *abrogated on other grounds*
2 *by GandyDancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, 453 P.3d 434; *Jones v Gen.*
3 *Motors Corp.*, 1998-NMCA-020, ¶ 23, 124 N.M. 606, 953 P.2d 1104).

4 **Causation is a requirement for actual damages; reliance is not.**

5 In *Smoot v. Physicians Life Ins. Co.*, the Court of Appeals, in the context of comparing
6 reliance and causation, observed that “the UPA . . . require[s] proof of a causal link between
7 conduct and loss.” 2004-NMCA-027, ¶ 21, 135 N.M. 265, 87 P.3d 545. The Court of Appeals held
8 that reliance was not an element of a UPA claim. *Id.* ¶¶ 19-23. It found “nothing in the language
9 of [the UPA] requiring proof of a link between conduct and purchase or sale. To the contrary,
10 Section 57-12-2-(D)(14) . . . does not require that the defendant’s conduct actually deceive a
11 consumer; it permits recovery even if the conduct only ‘tends to deceive.’” *Smoot*, 2004-NMCA-
12 027, ¶ 21.

13 [Adopted by Supreme Court Order No.22-8300-001, effective for all cases pending or filed on or
14 after February 21, 2022.]