STOCK INSTRUCTION 1
(General Instructions for Charge)

Ladies and Gentlemen of the Jury:

Please pay close attention to these instructions. I will read them only once, but the written instructions will be given to you to take to the jury room. Now that you have heard the evidence and will soon hear argument, it becomes my duty to give you the instructions of the court as to the law applicable to this case. It is your duty as jurors to follow the law as I shall state it to you, and to apply the law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by the court.

In explaining the rules of law that you must follow, I will first give you some general instructions that apply in every civil case – for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return.

Counsel may quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the court in these instructions, you are, of course, to be governed by the final instructions of the court.

Nothing the court says in these instructions is to be taken as an indication that the court has any opinion about the facts of the case, or what that opinion is. It is not the function of the court to determine the facts, but rather yours.

You must perform your duties as jurors without bias or prejudice as to any party.

The law does not permit you to be governed by sympathy, bias, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences. That is the oath that you took and the promise you made.

Anything you may have seen or heard outside the courtroom is not evidence, and must be disregarded entirely.

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted, stipulated, or judicially noticed. Nothing else is evidence. The statements and arguments of the lawyers are not evidence. Their questions and objections are not evidence. Thus, if a lawyer asks a question of a witness that contains an assertion of fact, you may not consider the assertion by the lawyer as any evidence of that fact. Only the answers are evidence. However, when the attorneys on both sides have stipulated or agreed as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved. The legal rulings of the court are not evidence. The comments and questions of the court are not evidence.

There are two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that the jury find the facts in accordance with the evidence in the case, both direct and circumstantial.

If any reference by the court or by counsel to matters of testimony or exhibits does not

coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the court or of counsel. You are the sole judges of the evidence received in this case.

You are to consider only the evidence in the case. However, in your consideration of the evidence, you are not limited to just the statements of the witnesses. In other words, you are not limited solely to what you saw and heard as the witnesses testified. You are permitted to draw, from the facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experience. An inference is a conclusion that reason and common sense may lead you to draw from the facts that you find have been proved by a preponderance of the evidence. By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in this case.

The mere number of witnesses appearing for or against a particular fact, issue, or proposition does not in and of itself prove or disprove that fact, issue, or proposition. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be disregarded entirely .

Any finding of fact you make must be based on probabilities, not possibilities. A finding of fact may not be based on surmise, speculation, or conjecture.

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is difficult and time consuming for the reporter to read back lengthy testimony.

Any verdict of the jury must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Any verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. However, do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case and return a just verdict based upon the evidence in the case and the law as the court has presented it to you.

Sources: *NM UJI 13-301 & 5th Circuit Pattern Instruction 3.1 (as modified)*

STOCK INSTRUCTION 2
(Non-English Speaking or Hearing-Impaired Juror)

We have at least one [non-English speaking] [hearing-impaired] juror in this case. The law permits all citizens to serve on a jury whether or not [English is their first language] [they are hearing- impaired]. You must include this [these] juror(s) in all deliberations and discussions on this case. To help you communicate, the juror(s) will be using the services of the official court interpreter. The following rules govern the conduct of the interpreter and the jury:

1. The interpreter's only function in the jury room is to interpret between [English and [the non-English speaking juror(s)' native language]] [speech and sign language].

2. The interpreter is not permitted to answer questions, express opinions, have direct conversations with other jurors or participate in your discussions or deliberations.

3. The interpreter is only permitted to speak directly to a member of the jury to ensure that the interpreter's equipment is functioning properly and to advise the jury foreperson if a specific interpreting problem arises that is not related to the factual or legal issues in the case.

4. No gesture, expression, sound or movement made by the interpreter in the jury room should influence your opinion or indicate how you should vote.

5. If you can speak both English and [the language of the non-English speaker] [read sign language], you must speak only English in the jury room so the rest of the jury is not excluded from any conversation.

6. Leave all interpretations to the official court interpreter. The interpreter is the only person permitted to interpret conversations inside the jury room and testimony in the courtroom.

7. You must immediately report any deviation from these rules by submitting a note identifying the problem to the judge or court personnel.

Source: *NM UJI 110A*

STOCK INSTRUCTION 3
(Corporation as Party)

The _____ (plaintiff, defendant, or other party) in this case is a corporation. A corporation is entitled to the same fair and unprejudiced treatment as an individual and you should decide the case with the same impartiality as you would use in deciding a case between individuals.

Source: *NM UJI 13-114*

STOCK INSTRUCTION 4
(Multiple Plaintiffs)

Although there is more than one plaintiff in this action, it does not follow from that fact alone that if one is entitled to recover, another is entitled to recover. The rights of the various plaintiffs in this lawsuit are separate and distinct, and you should decide the issues as if each plaintiff had brought a separate lawsuit.

[In this connection, you will note that some of the instructions apply to one plaintiff, while other instructions apply to all plaintiffs.]

Source: *NM UJI 13-115*

STOCK INSTRUCTION 5
(Multiple Defendants)

Although there is more than one defendant in this action, it does not follow from that fact alone that if one is liable another is liable. Each defendant is entitled to a fair consideration of that defendant's own defense. You will decide each defendant's case separately, as if each were a separate lawsuit.

Source: *NM UJI 13-116*

STOCK INSTRUCTION 6
(Deposition Testimony)

A deposition is testimony taken under oath before trial and has been preserved [in writing] [by video]. This testimony is entitled to the same consideration as any other testimony at this trial.

Source: *NM UJI 13-203*

The Directions for Use of this instruction state that it should be given when a deposition is first admitted into evidence, but may be repeated at the close of the case.

STOCK INSTRUCTION 7
(Interrogatories)

Interrogatories are written questions asked by one party to another before trial and answered under oath. The questions and answers may be read at trial as evidence. The answers read to you are entitled to the same consideration as any other testimony.

Source: *NM UJI 13-204*

The Directions for Use of this instruction state that it should be given when the interrogatories are first admitted into evidence, but may be repeated at the close of the case.

STOCK INSTRUCTION 8
(Expert Testimony)

The Rules of Evidence do not ordinarily permit a witness to testify as to an opinion or conclusion. However, a witness who is qualified as an expert in a subject may be permitted to state an opinion as to that subject. After considering the reasons stated for an opinion, you should give it such weight as it deserves. You may reject an opinion entirely if you conclude that it is unsound.

Source: *NM UJI 13-213*

The Directions for Use of this instruction state that it should be given at the time the expert first testifies.

STOCK INSTRUCTION 8B
(Expert Testimony)

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about important questions in a trial. An exception to this rule exists as to those witnesses who are described as "expert witnesses." An "expert witness" is someone who, by education, background, training, or experience, may have become knowledgeable in some technical, scientific, or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an "expert witness" in that area may state an opinion as to a matter in which he or she claims to be an expert.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence, including that of other "expert witnesses," you may disregard the opinion in part or in its entirety.

As I have told you several times, you, the jury, are the sole judges of the evidence and the facts of this case.

STOCK INSTRUCTION 9
(Use of Notes)

You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

Source: *5th Circuit Pattern Instruction 3.7 (excerpt)*

STOCK INSTRUCTION 10
(Statement of Theories for Recovery)

In this case the plaintiff(s) _____ (name of each plaintiff) seek(s) compensation from the defendant(s) _____ (name of each defendant) for damages that plaintiff(s) say(s) were caused by _____ (negligence, [and]

A Defective Product, [and]

Breach of Warranty, [and]

Breach of Contract, [and]

Fraudulent Misrepresentation, [and]

Etc.)

[Plaintiff's summary of theories for recovery must be individually tailored for each case.]

Source: *NM UJI 13-302A*

STOCK INSTRUCTION 11
(Statement of Denials and Affirmative Defenses)

The defendant(s) deny(ies) what the plaintiff(s) [say(s) about _____ (theory of recovery(ies) by name)] [and defendant(s) say(s) that: _____] (violation of the ordinance was excused or justified, [and] the plaintiff(s) [was] [were] negligent, [and] another party was negligent, [and] a non-party was negligent, [and] Etc.).

[Defendant's summary of denials and affirmative defenses must be individually tailored for each case.]

Source: *NM UJI 13-302C*

STOCK INSTRUCTION 12A
(Burden of Proof)

A party seeking a recovery [or a party relying upon a defense] has the burden of proving every essential element of the claim [or defense] by the preponderance of the evidence. To prove by the preponderance of the evidence means to establish that something is more likely true than not true. When I say, in these instructions, that the party has the burden of proof on _____ (theory(ies) of recovery by name), I mean that you must be persuaded that what is sought to be proved is more probably true than not true. Evenly balanced evidence is not sufficient.

Source: *NM UJI 13-304, substituting "preponderance" for "greater weight" and omitting clear and convincing standard*

STOCK INSTRUCTION 12B
(Burden of Proof)

The plaintiff has the burden of proving any claim by a preponderance of the evidence. The defendant has the burden of proving any affirmative defense by a preponderance of the evidence.

To “establish by the preponderance of the evidence” means to prove that something is more likely so than it is not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared to that opposed to it, has more convincing force, and produces in your mind a belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them, and any fact that has been admitted, stipulated, or judicially noticed.

"Burden of proof" means the obligation a party has to prove claim or defense by a preponderance of the evidence. The party with the burden of proof can use evidence produced by any party to persuade you. If a party fails to meet burden of proof as to any claim or defense or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must reject that claim or defense.

STOCK INSTRUCTION 13
(Causation)

An [act] [or] [omission] [or] [_____ (condition)] is a "cause" of [injury] [harm] [_____ (other)] if [, unbroken by an independent intervening cause,] it contributes to bringing about the [injury] [harm] [_____ (other)] [, and if injury would not have occurred without it]. It need not be the only explanation for the [injury] [harm] [_____ (other)], nor the reason that is nearest in time or place. It is sufficient if it occurs in combination with some other cause to produce the result. To be a "cause," the [act] [or] [omission] [or] [_____ (condition)], nonetheless, must be reasonably connected as a significant link to the [injury] [harm].

Source: *NM UJI 13-305*

Refer to the Directions for Use and Committee Commentary for explanations of how and when to use the bracketed material. If the evidence presents an issue with regard to an independent intervening cause, NM UJI 306 can also be given.

STOCK INSTRUCTION 14
(Consideration of Evidence)

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

Sources: *5th Circuit Pattern Instruction 3.3*

STOCK INSTRUCTION 15

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give the evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict on anything other than the evidence received in the case and the instructions of the court.

STOCK INSTRUCTION 16
(Official English Interpretation Controls)

You [are about to hear] [have heard] testimony of a witness who [will be testifying] [testified] in the [specify foreign language] language. Witnesses who do not speak English or are more proficient in another language testify through an official court interpreter. Although some of you may know the [specify foreign language] language, it is important that all jurors consider the same evidence. Therefore, you must accept the interpreter's translation of the witness's testimony. You must disregard any different meaning.

You must not make any assumptions about a witness or a party based solely on the use of an interpreter to assist that witness or party.

Source: *9th Circuit Pattern Instruction 2.8*

STOCK INSTRUCTION 17
(Rules of Evidence)

The production of evidence in court is governed by rules of law. From time to time it has been my duty, as judge, to rule on the evidence. You must not concern yourselves with the reasons for these rulings. You should not consider what would or would not have been the answers to the questions which the court ruled could not be answered.

Source: *NM UJI 13-307 (first paragraph omitted here, but included in Stock Instruction 14)*

STOCK INSTRUCTION 18

(Charts and Summaries Received in Evidence)

Certain charts and summaries [may be] [have been] admitted into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the testimony or other admitted evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Source: *9th Circuit Pattern Instruction 2.15*

STOCK INSTRUCTION 19

(Charts and Summaries Not Received in Evidence)

Certain charts and summaries not admitted into evidence [may be] [have been] shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Source: *9th Circuit Pattern Instruction 2.14*

STOCK INSTRUCTION 20
(Limiting Instruction)

When testimony or an exhibit is admitted for a limited purpose, you may consider that testimony or exhibit only for the specific limited purpose for which it was admitted.

Source: *5th Circuit Pattern Instruction 2.6*

STOCK INSTRUCTION 21
(Corporation Acts Through Employees)

A corporation can act only through its officers and employees. Any act or omission of an officer or an employee of a corporation, within the scope or course of that officer's or employee's employment, is the act or omission of the corporation.

Source: *NM UJI 13-409*

STOCK INSTRUCTION 22
(Liability Determined Before Damages)

You are not to engage in any discussion of damages unless you have first determined that there is liability, as elsewhere covered in these instructions. The fact that you are given instructions on damages is not to be taken as an indication as to whether the court thinks damages should or should not be awarded.

Source: *NM UJI 13-1801*

STOCK INSTRUCTION 23
(Compensatory Damages)

If you find that Defendant [name] is liable, you must award the amount you find by a preponderance of the evidence is full and just compensation for all of Plaintiff [name]'s damages.1 (If punitive damages are an issue:) [You also will be asked to determine if Defendant [name] is liable for punitive damages. Because the methods of determining punitive damages and compensatory damages differ, I will instruct you separately on punitive damages. The instructions I give you now apply only to your consideration of compensatory damages.] Compensatory damages are not allowed as a punishment against a party. Such damages cannot be based on speculation, because compensatory damages must be actual damages to be recoverable. But compensatory damages are not restricted to out-of-pocket losses of money or lost time. Instead, compensatory damages may include mental and physical aspects of injury, tangible and intangible. Compensatory damages are intended to make Plaintiff [name] whole, or to restore [him/her] to the position [he/she] would have been in if the accident had not happened. You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence: [insert elements of damages]

Sources: *5th Circuit Pattern Instruction 4.8. Last sentence of NM UJI 13-180.*

STOCK INSTRUCTION 23
(Mitigation of Damages)

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate—to avoid or minimize those damages. If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which he or she could have avoided through reasonable effort. If you find by a preponderance of the evidence the plaintiff unreasonably failed to take advantage of an opportunity to lessen the damages, you should deny a recovery for those damages which the plaintiff would have avoided had he or she taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce damages. However, the plaintiff is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of a failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied the burden of proving that the plaintiff's conduct was not reasonable.

Source: *5th Circuit Pattern Instruction 15.5, modified to be gender-neutral*

STOCK INSTRUCTION 24
(Prohibition on Double Recoveries)

You must not award compensatory damages more than once for the same injury. The plaintiff is only entitled to be made whole once, and may not recover more than the plaintiff has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all injuries.

[With respect to punitive damages, you may make separate awards on each claim that the plaintiff has established.]

STOCK INSTRUCTION 25A
(Punitive Damages—Direct Liability)

You may consider punitive damages only if you find that the plaintiff should recover compensatory [or nominal] damages.

If you find that the conduct of the defendant was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], then you may award punitive damages against [him] [her] [it].

[Malicious conduct is the intentional doing of a wrongful act with knowledge that the act was wrongful.]

[Willful conduct is the intentional doing of an act with knowledge that harm may result.]

[Reckless conduct is the intentional doing of an act with utter indifference to the consequences. When there is a high risk of danger, conduct that breaches the duty of care is more likely to demonstrate recklessness.]

[Wanton conduct is the doing of an act with utter indifference to or conscious disregard for a person's [rights] [safety].]

Punitive damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses. The amount of punitive damages must be based on reason and justice taking into account all the circumstances, including the nature and enormity of the wrong and such aggravating and mitigating circumstances as may be shown. The property or wealth of the defendant is a legitimate factor for your consideration. The amount awarded, if any, must be reasonably related to the injury and to any damages given as compensation and not disproportionate to the circumstances.

Source: *NM UJI 13-1827, omitting first sentence and provisions related to vicarious liability*

STOCK INSTRUCTION 25B
(Punitive Damages—Vicarious Liability)

If you find that the conduct of _____ (name of agent or employee of party on whose conduct vicarious claim for punitive damages is based) was [malicious], [willful], [reckless], [wanton], [fraudulent] [or] [in bad faith], you may award punitive damages against _____ (name of party against whom vicarious liability for punitive damages is asserted) if:

(A) _____ (name of agent or employee) was acting in the scope of [his] [her] employment by _____ (name of party) and had sufficient discretionary or policy making authority to speak and act for [him] [her] [it] with regard to the conduct at issue, independently of higher authority; [or if]

(B) _____ (name of party) in some [other] way [authorized,] [participated in] [or] [ratified] the conduct of _____ (name of agent or employee).

Source: *NM UJI 13-1827*

This instruction should be substituted for the second paragraph of Stock Instruction 25A or incorporated immediately after that paragraph depending on whether vicarious liability or both direct and vicarious liability are at issue.

STOCK INSTRUCTION 26
(Nominal Damages)

If you find that _____ (plaintiff) has established a right to recover from _____ (defendant) but that _____ (plaintiff) has suffered [no harm], [insignificant harm], [or] [damages that cannot be ascertained], you may award [him] [her] [it] nominal damages. Nominal damages are a trivial sum of money, usually one cent or one dollar, awarded to a party who has established a right to recover but has not established that [he] [she] [it] is entitled to compensatory damages.

[The award of a nominal sum for actual damages would not prevent you from awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these circumstances.]

Source: *NM UJI 13-1832, with additional optional language in brackets*

STOCK INSTRUCTION 27
(Duty to Follow Instructions)

The law of this case is contained in these instructions and it is your duty to follow them. You must consider these instructions as a whole, not picking out one instruction, or parts thereof, and disregarding others.

Faithful performance by you of your duties is vital to the administration of justice.

Source: *NM UJI 13-2001 & 13-2002*

STOCK INSTRUCTION 28
(Credibility of Witnesses)

I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate. You alone are the judges of the credibility or "believability" of the witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given to the testimony of any witness, you may take into account the witness's ability and opportunity to observe, the witness's memory, the witness's manner while testifying, any interest, bias or prejudice that the witness may have and the reasonableness of the testimony, considered in light of all the evidence in the case. You may, in short, accept or reject the testimony of any witness in whole or in part.

Source: *NM UJI 12-2003, with additions*

STOCK INSTRUCTION 28B
(Credibility of Witnesses)

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, by the manner in which the witness testifies, by the character of the testimony given, and by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony. You may, in short, accept or reject the testimony of any witness in whole or in part. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves. An act or omission is "knowingly" done if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

STOCK INSTRUCTION 29
(Impeachment of Witness)

A witness may be discredited or impeached by contradictory evidence or inconsistent conduct, or by evidence that at other times the witness has made material statements, under oath or otherwise, which are inconsistent with the present testimony of the witness.

If you believe that any witness has been impeached or discredited, it is up to you to give the testimony of that witness only such credit as you may think it deserves.

Source: *NM UJI 13-2004, with "up to you" substituted for "your exclusive province"*

STOCK INSTRUCTION 30
(Intent)

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done or omitted by that person and all other facts and circumstances received in evidence, which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

STOCK INSTRUCTION 31
(All Jurors to Participate)

The jury acts as a body. Therefore, on every question which the jury must answer it is necessary that all jurors participate. Before a question can be answered, all of you must agree upon each answer. In other words, your verdict must be unanimous.

Source: *NM UJI 13-2006, modified to meet unanimity requirement and with added last sentence*

STOCK INSTRUCTION 32

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict the court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

STOCK INSTRUCTION 33
(Concluding Instruction)

Upon retiring to the jury room, and before commencing your deliberations, you will first elect a foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

You will be given the Court's instructions and [a special] verdict form[s]. [In this case it will be necessary for you to answer the preliminary questions presented to you on the verdict form.] If you recess during your deliberations, follow all of the instructions that I have given you about your conduct during the trial. If, during your deliberations, you should desire to communicate with me, please put your message or question in writing on one of the forms that my court staff will provide to you. Your note should be signed by the foreperson and then passed to the court security officer who will bring it to my attention.

Never attempt to communicate with me except by a written note signed by your foreperson. I will respond as promptly as possible, either in writing or by having you returned to the courtroom. I will always first disclose to the attorneys your question and my response before I answer your question. If I reply to you in writing, please leave both the message and the reply in the jury room. These documents should not be thrown away, even at the conclusion of your deliberations. Bear in mind always that you are not to reveal to me or to any person how you stand, numerically or otherwise, until you have reached a unanimous verdict. Do not disclose any vote count in any communications with the Court.

After you have reached your unanimous verdict, your foreperson is to fill in the answers to the questions on the verdict form and date and sign the form. The completed, signed verdict form should then be placed in the envelope that will be provided to you. After completing the verdict form, please also send a note to the court security officer indicating that you have reached

a verdict and are ready to return to the courtroom. Again, any notes you pass to the court security officer should not state what your verdict is or how you have voted.

DATED this _____ day of _____, 2____.

_____
THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE

Sources: *First two paragraphs—derived from first two paragraphs of NM UJI 13-2009. Remaining paragraphs—derived from 9th Circuit Pattern Instruction 4.3 and stock instructions of other judges of this Court*