

Judicial Council of California Civil Jury Instructions

CACI*

* Pronounced “Casey”

Supplement With Revised Instructions

As approved at
the Judicial Council’s Rules Committee April 2024 meeting
and the Judicial Council May 2024 Meeting



**Judicial Council of California
Advisory Committee on Civil Jury Instructions**

Hon. Adrienne M. Grover, Chair

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Preface to CACI Updates

This supplement to the 2024 edition of CACI includes a number of additions and changes to the instructions, which were first published in 2003. In providing these updates, the Judicial Council Advisory Committee on Civil Jury Instructions is fulfilling its charge to maintain CACI. The committee is also striving to add instructions in new areas of the law and to augment existing areas.

The impetus for the revisions came from several sources including CACI users who detected changes in the law or who simply sought to do a better job of explaining the law in plain English. Responding to feedback from users is consistent with the Advisory Committee's goal to act as a vehicle for maintaining CACI as the work product of the legal community. We hope that our hundreds of contributors view our role in the same way and that they will continue to support us.

May 2024

Hon. Adrienne M. Grover
Court of Appeal, Sixth District
Chair, Advisory Committee on Civil Jury Instructions

The Advisory Committee on Civil Jury Instructions welcomes comments. Send comments by email to: civiljuryinstructions@jud.ca.gov

Or you may send print comments by regular mail to:
Advisory Committee on Civil Jury Instructions—Attn. Eric Long
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San Francisco, CA 94102-3588

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VF-4520. Contractor's Claim for Changed or Extra Work—Owner's Response That Contract Procedures Not Followed—Contractor's Claim of Waiver (*revised*)

WHISTLEBLOWER PROTECTION

4603. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5) (*sources and authority*)

VF-4600. False Claims Act: Whistleblower Protection (Gov. Code, § 12653) (*revised*)

VF-4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Affirmative Defense—Same Decision (Gov. Code, § 8547.8(c)) (*revised*)

VF-4602. Whistleblower Protection—Affirmative Defense of Same Decision (Lab. Code, §§ 1102.5, 1102.6) (*revised*)

CONCLUDING INSTRUCTIONS

5009. Predeliberation Instructions (*revised*)

5012. Introduction to Special Verdict Form (*revised*)

VF-5000. General Verdict Form—Single Plaintiff—Single Defendant—Single Cause of Action (*revised*)

VF-5001 General Verdict Form—Single Plaintiff—Single Defendant—Multiple Causes of Action (*revised*)



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The Judicial Council is the policymaking body of the California courts. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice.

372. Common Count: Open Book Account

A book account is a written record of the credits and debts between parties [to a contract/in a fiduciary relationship]. [The contract may be oral, in writing, or implied by the parties' words and conduct.] A book account is “open” if entries can be added to it from time to time.

[Name of plaintiff] claims that there was an open book account in which financial transactions between the parties were recorded and that [name of defendant] owes [him/her/nonbinary pronoun/it] money on the account. To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of plaintiff] and [name of defendant] had financial transactions with each other;**
- 2. That [name of plaintiff], in the regular course of business, kept [a written/an electronic] account of the debits and credits involved in the transactions;**
- 3. That [name of defendant] owes [name of plaintiff] money on the account; and**
- 4. The amount of money that [name of defendant] owes [name of plaintiff].**

*New December 2005; Revised November 2019, May 2024**

Directions for Use

The instructions in this series are not intended to cover all available common counts. Users may need to draft their own instructions or modify the CACI instructions to fit the circumstances of the case.

Include the second sentence in the opening paragraph if the account is based on a contract rather than a fiduciary relationship. It is the contract that may be oral or implied; the book account must be in writing. (See Code Civ. Proc., § 337a [book account must be kept in a reasonably permanent form]; *Joslin v. Gertz* (1957) 155 Cal.App.2d 62, 65–66 [317 P.2d 155] [book account is a detailed statement kept in a book].)

Do not give this instruction for a claim involving “consumer debt” incurred on or after July 1, 2024. (See Code Civ. Proc., § 337a(a), (b) [defining and excluding “consumer debt” from the definition of “book account”]; see also Code Civ. Proc., § 425.30 [exempting consumer debt from common counts].)

Sources and Authority

- “Book Account” and “Consumer Debt” for Book Accounts Defined. Code of Civil Procedure section 337a(a), (b).
- “ ‘A book account may be deemed to furnish the foundation for a suit in *assumpsit* . . . only when it contains a statement of the debits and credits of the transactions involved completely enough to supply evidence from which it can be reasonably determined what amount is due to the claimant.’ . . . ‘The term “account,” . . . clearly requires the recording of sufficient information regarding the transaction involved in the suit, from which the debits and credits of the respective parties may be determined, so as to permit the striking of a balance to ascertain what sum, if any, is due to the claimant.’ ” (*Robin v. Smith* (1955) 132 Cal.App.2d 288, 291 [282 P.2d 135], internal citations omitted.)
- “A book account is defined . . . as ‘a detailed statement, kept in a book, in the nature of debit and credit, arising out of contract or some fiduciary relation.’ It is, of course, necessary for the book to show against whom the charges are made. It must also be made to appear in whose favor the charges run. This may be shown by the production of the book from the possession of the plaintiff and his identification of it as the book in which he kept the account between him and the debtor. An open book account may consist of a single entry reflecting the establishment of an account between the parties, and may contain charges alone if there are no credits to enter. Money loaned is the proper subject of an open book account. Of course a mere private memorandum does not constitute a book account.” (*Joslin, supra*, 155 Cal.App.2d at pp. 65–66, internal citations omitted.)
- “A book account may furnish the basis for an action on a common count ‘ “. . . when it contains a statement of the debits and credits of the transactions involved completely enough to supply evidence from which it can be reasonably determined what amount is due to the claimant.” ’ A book account is described as ‘open’ when the debtor has made some payment on the account, leaving a balance due.” (*Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708 [220 Cal.Rptr. 250], internal citations and footnote omitted.)
- “A *book account* is a detailed statement of debit/credit transactions kept by a creditor in the regular course of business, and in a reasonably permanent manner. In one sense, an *open-book account* is an account with one or more items unsettled. However, even if an account is technically settled, the parties may still have an open-book account, if they anticipate possible future transactions between them.” (*Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 579, fn. 5 [53 Cal.Rptr.3d 887, 150 P.3d 764], original italics, internal citation omitted.)
- “[T]he most important characteristic of a suit brought to recover a sum owing on a book account is that the amount owed is determined by computing *all* of the credits and debits entered in the book account.” (*Interstate Group Administrators, Inc., supra*, 174 Cal.App.3d at p. 708.)

- “It is apparent that the mere entry of dates and payments of certain sums in the credit column of a ledger or cash book under the name of a particular individual, without further explanation regarding the transaction to which they apply, may not be deemed to constitute a ‘book account’ upon which an action in *assumpsit* may be founded.” (*Tillson v. Peters* (1940) 41 Cal.App.2d 671, 679 [107 P.2d 434].)
- “The law does not prescribe any standard of bookkeeping practice which all must follow, regardless of the nature of the business of which the record is kept. We think it makes no difference whether the account is kept in one book or several so long as they are permanent records, and constitute a system of bookkeeping as distinguished from mere private memoranda.” (*Egan v. Bishop* (1935) 8 Cal.App.2d 119, 122 [47 P.2d 500].)
- “‘The common count is a general pleading which seeks recovery of money without specifying the nature of the claim. Because of the uninformative character of the complaint, it has been held that the typical answer, a *general denial*, is sufficient to raise almost any kind of defense, including some which ordinarily require special pleading.’ However, even where the plaintiff has pleaded in the form of a common count, the defendant must raise in the answer any new matter, that is, anything he or she relies on that is not put in issue by the plaintiff.” (*Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 731 [14 Cal.Rptr.2d 822, 842 P.2d 121], internal citations and footnote omitted.)
- “Although such an action is one at law, it is governed by principles of equity. It may be brought ‘wherever one person has received money which belongs to another, and which “in equity and good conscience,” or in other words, in justice and right, should be returned . . . The plaintiff’s right to recover is governed by principles of equity, although the action is one at law.’ ” (*Mains v. City Title Ins. Co.* (1949) 34 Cal.2d 580, 586 [212 P.2d 873], internal citations omitted.)
- “[S]ince the basic premise for pleading a common count . . . is that the person is thereby ‘waiving the tort and suing in assumpsit,’ any tort damages are out. Likewise excluded are damages for a breach of an express contract. The relief is something in the nature of a constructive trust and . . . ‘one cannot be held to be a constructive trustee of something he had not acquired.’ One must have acquired some money which in equity and good conscience belongs to the plaintiff or the defendant must be under a contract obligation with nothing remaining to be performed except the payment of a sum certain in money.” (*Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 14–15 [101 Cal.Rptr. 499], internal citations omitted.)
- “‘As Witkin states in his text, “[a] common count is proper whenever the plaintiff claims a sum of money due, either as an indebtedness in a sum certain, or for the reasonable value of services, goods, etc., furnished. It makes no difference in such a case that the proof shows the original transaction to be an express contract, a contract implied in fact, or a quasi-contract.”’ A claim for money had and received can be based upon money paid by mistake, money paid pursuant to a void contract, or a performance by one party of an express

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contract.” (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 958 [5 Cal.Rptr.3d 520], internal citations omitted.)

- “In the common law action of general assumpsit, it is customary to plead an indebtedness using ‘common counts.’ In California, it has long been settled the allegation of claims using common counts is good against special or general demurrers. The only essential allegations of a common count are ‘(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.’ ” (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460 [61 Cal.Rptr.2d 707], internal citations omitted.)
- “A common count is not a specific cause of action, . . . rather, it is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness, including that arising from an alleged duty to make restitution under an assumpsit theory. When a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action, and is based on the same facts, the common count is demurrable if the cause of action is demurrable.” (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394 [20 Cal.Rptr.3d 115], internal citations omitted.)

Secondary Sources

4 Witkin, California Procedure (6th ed. 2021) Pleading, §§ 561, 565

1 California Forms of Pleading and Practice, Ch. 8, *Accounts Stated and Open Accounts*, §§ 8.20, 8.47 (Matthew Bender)

4 California Points and Authorities, Ch. 43, *Common Counts and Bills of Particulars*, § 43.20 et seq. (Matthew Bender)

1 Matthew Bender Practice Guide: California Contract Litigation, Ch. 9, *Seeking or Opposing Quantum Meruit or Quantum Valebant Recovery in Contract Actions*, 9.02, 9.15, 9.32

VF-300. Breach of Contract

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into a contract?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [2. Did *[name of plaintiff]* do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No

If your answer to question 2 is yes, [skip question 3 and] answer question 4. If you answered no, [answer question 3 *if excuse is at issue/stop here, answer no further questions, and have the presiding juror sign and date this form.*]

- [3. Was *[name of plaintiff]* excused from having to do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- [4. Did all the conditions that were required for *[name of defendant]*'s performance occur?

_____ Yes _____ No

If your answer to question 4 is yes, [skip question 5 and] answer question 6. If you answered no, [answer question 5 *if waiver or excuse is at issue/stop here, answer no further questions, and have the presiding juror sign and date this form.*]

- [5. Were the required conditions that did not occur [excused/waived]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

6. **[Did [name of defendant] fail to do something that the contract required [him/her/nonbinary pronoun/it] to do?**

_____ Yes _____ No]

[or]

[Did [name of defendant] do something that the contract prohibited [him/her/nonbinary pronoun/it] from doing?

_____ Yes _____ No]

If your answer to [either option for] question 6 is yes, then answer question 7. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Was [name of plaintiff] harmed by [name of defendant]’s breach of contract?**

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. **What are [name of plaintiff]’s damages?**

[a. Past [economic] loss [including [insert descriptions of claimed damages]]: \$_____]

[b. Future [economic] loss [including [insert descriptions of claimed damages]]: \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New April 2004; Revised December 2010, June 2011, June 2013, June 2015, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 303, *Breach of Contract—Essential Factual Elements*. This form is intended for use in most contract disputes. If more specificity is desired, see verdict forms that follow.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 2 and 3 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 2 if the court has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) Include question 3 if the plaintiff claims that the plaintiff was excused from having to perform an otherwise required obligation.

Optional questions 4 and 5 address conditions precedent to the defendant's performance. Include question 4 if the occurrence of conditions for performance is at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 5 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant's waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/ Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515].)

Note that questions 4 and 5 address conditions precedent, not the defendant's nonperformance after the conditions have all occurred or been excused. The defendant's nonperformance is the first option for question 6. If the defendant alleges that its nonperformance was excused or waived by the plaintiff, an additional question on excuse or waiver should be included after question 6.

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use "economic" in question 8.

If specificity is not required, users do not have to itemize the damages listed in question 8. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-301. Breach of Contract—Affirmative Defense—Unilateral Mistake of Fact

We answer the questions submitted to us as follows:

1. Was [name of defendant] mistaken about [insert description of mistake]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of plaintiff] know that [name of defendant] was mistaken and use that mistake to take advantage of [him/her/nonbinary pronoun/it]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]’s mistake caused by [his/her/nonbinary pronoun/its] excessive carelessness?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would [name of defendant] have agreed to enter into the contract if [he/she/nonbinary pronoun/it] had known about the mistake?

_____ Yes _____ No

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New April 2004; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may

need to be modified depending on the facts of the case. This form is not a stand-alone verdict form. It may be incorporated into VF-300, *Breach of Contract*, if the elements of the affirmative defense are at issue.

This verdict form is based on CACI No. 330, *Affirmative Defense—Unilateral Mistake of Fact*. The verdict forms do not address all available affirmative defenses. The parties may need to create their own verdict forms to fit the issues involved in the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-302. Breach of Contract—Affirmative Defense—Duress

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] use a wrongful act or wrongful threat to pressure [*name of defendant*] into consenting to the contract?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] so afraid or intimidated by the wrongful act or wrongful threat that [*he/she/nonbinary pronoun*] did not have the free will to refuse to consent to the contract?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would [*name of defendant*] have consented to the contract without the wrongful act or wrongful threat?

_____ Yes _____ No

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New April 2004; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. This form is not a stand-alone verdict form. It may be incorporated into VF-300, *Breach of Contract*, if the elements of the affirmative defense are at issue.

This verdict form is based on CACI No. 332, *Affirmative Defense—Duress*. The verdict forms do not address all available affirmative defenses. The parties may need to create their own verdict forms to fit the issues involved in the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of

action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-303. Breach of Contract—Contract Formation at Issue

We answer the questions submitted to us as follows:

1. Were the contract terms clear enough so that the parties could understand what each was required to do?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the parties agree to give each other something of value?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the parties agree to the terms of the contract?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [4. Did *[name of plaintiff]* do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No

If your answer to question 4 is yes, [skip question 5 and] answer question 6. If you answered no, [answer question 5 if excuse is at issue/stop here, answer no further questions, and have the presiding juror sign and date the form].]

- [5. Was *[name of plaintiff]* excused from having to do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- [6. Did all the conditions that were required for *[name of defendant]*'s performance occur?

_____ Yes _____ No

If your answer to question 6 is yes, [skip question 7 and] answer question 8. If you answered no, [answer question 7 if *excuse_or waiver is at issue/stop here, answer no further questions, and have the presiding juror sign and date this form.*]

- [7. Were the required conditions that did not occur [excused/waived]?**

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- 8. [Did [name of defendant] fail to do something that the contract required [him/her/nonbinary pronoun/it] to do?**

_____ Yes _____ No]

[or]

[Did [name of defendant] do something that the contract prohibited [him/her/nonbinary pronoun/it] from doing?

_____ Yes _____ No]

If your answer to [either option for] question 8 is yes, then answer question 9. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

- 9. Was [name of plaintiff] harmed by [name of defendant]'s breach of contract?**

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 10. What are [name of plaintiff]'s damages?**

- [a. Past [economic] loss [including] [insert descriptions of claimed damages]:**

\$_____]

- [b. Future [economic] loss [including] [insert descriptions of claimed damages]:]**

\$_____]

TOTAL \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New October 2004; Revised December 2010, June 2015, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 302, *Contract Formation—Essential Factual Elements*, and CACI No. 303, *Breach of Contract—Essential Factual Elements*. The elements concerning the parties' legal capacity and legal purpose will likely not be issues for the jury. If the jury is needed to make a factual determination regarding these issues, appropriate questions may be added to this verdict form.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 4 and 5 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 4 if the court has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) Include question 5 if the plaintiff claims that the plaintiff was excused from having to perform an otherwise required obligation.

Optional questions 6 and 7 address conditions precedent to the defendant's performance. Include question 6 if the occurrence of conditions for performance is at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 7 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant's waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/ Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515].)

Note that questions 6 and 7 address conditions precedent, not the defendant's nonperformance after the conditions have all occurred or been excused. The defendant's nonperformance is the first option for question 8. If the defendant alleges that its nonperformance was excused or waived by the plaintiff, an additional question on excuse on waiver should be included after question 8.

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use "economic" in question 10.

If specificity is not required, users do not have to itemize all the damages listed in question 10. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-304. Breach of Implied Covenant of Good Faith and Fair Dealing

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into a contract?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [2. Did *[name of plaintiff]* do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No]

If your answer to question 2 is yes, [skip question 3 and] answer question 4. If you answered no, [answer question 3 *if excuse is at issue/stop here, answer no further questions, and have the presiding juror sign and date this form.*]

- [3. Was *[name of plaintiff]* excused from having to do all, or substantially all, of the significant things that the contract required *[him/her/nonbinary pronoun/it]* to do?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- [4. Did all the conditions that were required for *[name of defendant]*'s performance occur?

_____ Yes _____ No

If your answer to question 4 is yes, [skip question 5 and] answer question 6. If you answered no, [answer question 5 *if waiver or excuse is at issue/stop here, answer no further questions, and have the presiding juror sign and date this form.*]

- [5. Were the required conditions that did not occur [excused/waived]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.]

6. Did *[name of defendant]* unfairly interfere with *[name of plaintiff]*'s right to receive the benefits of the contract?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was *[name of plaintiff]* harmed by *[name of defendant]*'s interference?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are *[name of plaintiff]*'s damages?

- [a. Past **[economic]** loss **[including** *[insert descriptions of claimed damages]*]:

\$_____]

- [b. Future **[economic]** loss **[including** *[insert descriptions of claimed damages]*]:

\$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New June 2014; Revised June 2015, May 2024

Directions for Use

This verdict form is based on CACI No. 325, *Breach of Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*.

The special verdict forms in this series are intended only as models. They may need to be modified depending on the facts of the case.

Optional questions 2 and 3 address acts that the plaintiff must have performed before the defendant's duty to perform is triggered. Include question 2 if the court

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has determined that the contract included dependent covenants, such that the failure of the plaintiff to perform some obligation would relieve the defendant of the obligation to perform. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) Include question 3 if the plaintiff claims that he or she was excused from having to perform an otherwise required obligation.

Optional questions 4 and 5 address conditions precedent to the defendant’s performance. Include question 4 if the occurrence of conditions for performance is at issue. (See CACI No. 322, *Occurrence of Agreed Condition Precedent*.) Include question 5 if the plaintiff alleges that conditions that did not occur were excused. The most common form of excuse is the defendant’s waiver. (See CACI No. 323, *Waiver of Condition Precedent*; see also Restatement Second of Contracts, section 225, Comment b.) Waiver must be proved by clear and convincing evidence. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 60 [35 Cal.Rptr.2d 515].) Note that questions 4 and 5 address conditions precedent, not the defendant’s nonperformance after the conditions have all occurred or been excused.

If the verdict form used combines other causes of action involving both economic and noneconomic damages, use “economic” in question 8.

If specificity is not required, users do not have to itemize the damages listed in question 8. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*. If counts for both breach of express contractual terms and breach of the implied covenant are alleged, this verdict form may be combined with CACI No. VF-300, *Breach of Contract*. Use VF-3920 to direct the jury to separately address the damages awarded on each count and to avoid the jury’s awarding the same damages on both counts. (See *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 [272 Cal.Rptr. 387].)

441. Negligent Use of Deadly Force by Peace Officer—Essential Factual Elements

A peace officer may use deadly force only when necessary in defense of human life. *[Name of plaintiff]* claims that *[name of defendant]* was negligent in using deadly force to [arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance to] *[him/her/nonbinary pronoun/name of decedent]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* was a peace officer;
2. That *[name of defendant]* used deadly force on *[name of plaintiff/decedent]*;
3. That *[name of defendant]*'s use of deadly force was not necessary to defend human life;
4. That *[name of plaintiff/decedent]* was [harmed/killed]; and
5. That *[name of defendant]*'s use of deadly force was a substantial factor in causing *[name of plaintiff/decedent]*'s [harm/death].

[Name of defendant]'s use of deadly force was necessary to defend human life only if a reasonable officer in the same situation would have believed, based on the totality of the circumstances known to or perceived by *[name of defendant]* at the time, that deadly force was necessary [either]:

[to defend against an imminent threat of death or serious bodily injury to *[name of defendant]* [and/or] [another person]][; or/.]

[to apprehend a fleeing person for a felony, when all of the following conditions are present:

- i. The felony threatened or resulted in death or serious bodily injury to another;
- ii. *[Name of defendant]* reasonably believed that the person fleeing would cause death or serious bodily injury to another unless immediately apprehended; and
- iii. *[Name of defendant]* made reasonable efforts to identify [himself/herself/nonbinary pronoun] as a peace officer and to warn that deadly force may be used, unless the officer had objectively reasonable grounds to believe the person is aware of those facts.]

[A peace officer must not use deadly force against persons based only on the danger those persons pose to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.]

[A person being [arrested/detained] has a duty not to use force to resist a peace officer unless the peace officer is using unreasonable force.]

["Deadly force" is force that creates a substantial risk of causing death or serious bodily injury. It is not limited to the discharge of a firearm.]

A threat of death or serious bodily injury is "imminent" if, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

"Totality of the circumstances" means all facts known to or perceived by the peace officer at the time, including the conduct of [name of defendant] and [name of plaintiff/decedent] leading up to the use of deadly force. In determining whether [name of defendant]'s use of deadly force was necessary in defense of human life, you must consider [name of defendant]'s tactical conduct and decisions before using deadly force on [name of plaintiff/decedent] and whether [name of defendant] used other available resources and techniques as [an] alternative[s] to deadly force, if it was reasonably safe and feasible to an objectively reasonable officer.

[A peace officer who makes or attempts to make an arrest does not have to retreat or stop because the person being arrested is resisting or threatening to resist. Tactical repositioning or other deescalation tactics are not retreat. A peace officer does not lose the right to self-defense by using objectively reasonable force to [arrest/detain/ [,/or] prevent escape/ [,/or] overcome resistance].]

New November 2020

Directions for Use

Use this instruction for a negligence claim arising from a peace officer's use of deadly force. Penal Code section 835a preserves the "reasonable force" standard for nondeadly force, but creates a separate, higher standard that authorizes a peace officer to use deadly force only when "necessary in defense of human life." If the plaintiff claims that the defendant used both deadly and nondeadly force, or if the jury must decide whether the force used was deadly or nondeadly, this instruction may be used along with the corresponding essential elements for negligence involving nondeadly force. See CACI No. 440, *Negligent Use of Nondeadly Force by Law Enforcement Officer in Arrest or Other Seizure—Essential Factual Elements*.

Element 1 may be stipulated to or decided by the judge as a matter of law. In such a case, the judge must instruct the jury that the defendant was a peace officer. If

there are contested issues of fact regarding element 1, include the specific factual findings necessary for the jury to determine whether the defendant was a peace officer.

Select either or both bracketed options concerning the justifications for using deadly force under Penal Code section § 835a(c) depending on the facts of the case. If only one justification is supported by the facts, omit the either/or language. Include the bracketed sentence following the justifications if the plaintiff claims that the only threat the plaintiff posed was self-harm. A peace officer may not use deadly force against a person based on a danger that person poses to themselves if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a(c)(2).)

“Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a(e)(1).) The definition may be omitted from the instruction if a firearm was used. Note that this definition does not require that the encounter result in the death of the person against whom the force was used. If there is no dispute about the use of deadly force, the court should instruct the jury that deadly force was used.

Include the final bracketed paragraph only if the defendant claims that the person being arrested resisted arrest or threatened resistance.

In a wrongful death or survival action, use the name of the decedent victim where applicable and further modify the instruction as appropriate.

Sources and Authority

- Legislative Findings Regarding Use of Force by Law Enforcement. Penal Code section 835a(a).
- When Use of Deadly Force Is Justified. Penal Code section 835a(c).
- When Peace Officer Need Not Retreat. Penal Code section 835a(d).
- Definitions. Penal Code section 835a(e).
- “Peace Officer” Defined. Penal Code section 830 et seq.
- “There is an abundance of authority permitting a plaintiff to go to the jury on both intentional and negligent tort theories, even though they are inconsistent. It has often been pointed out that there is no prohibition against pleading inconsistent causes of action stated in as many ways as plaintiff believes his evidence will show, and he is entitled to recover if one well pleaded count is supported by the evidence.” (*Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 586 [86 Cal.Rptr. 465, 468 P.2d 825].)
- “The evidence relevant to negligence and intentional tort overlaps here and presents a case similar to *Grudt v. City of Los Angeles*, *supra*, 2 Cal.3d 575. . . . [¶] This court held it was reversible error to exclude the negligence issue from the jury even though plaintiff also had pled intentional tort. The court pointed to

CACI No. 441

the rule that a party may proceed on inconsistent causes of action unless a nonsuit is appropriate.” (*Munoz v. Olin* (1979) 24 Cal.3d 629, 635 [156 Cal.Rptr. 727, 596 P.2d 1143].)

- “[T]here is no right to use force, reasonable or otherwise, to resist an unlawful detention . . .” (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 333 [27 Cal.Rptr.2d 406].)
- “[E]xecution of an unlawful arrest or detention does not give license to an individual to strike or assault the officer *unless* excessive force is used or threatened; excessive force in that event triggers the individual’s right of self-defense.” (*Evans, supra*, 22 Cal.App.4th at p. 331, original italics, internal citation omitted.)
- “[T]he reasonableness of a peace officer’s conduct must be determined in light of the totality of circumstances. [Citations.] . . . [P]reshooting conduct is included in the totality of circumstances surrounding an officer’s use of deadly force, and therefore the officer’s duty to act reasonably when using deadly force extends to preshooting conduct.” (*Villalobos v. City of Santa Maria* (2022) 85 Cal.App.5th 383, 389 [301 Cal.Rptr.3d 308], internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 427, 993

3 Levy et al., California Torts, Ch. 61, *Particular Liabilities and Immunities of Public Entities and Public Employees*, § 61.10 (Matthew Bender)

6 California Forms of Pleading and Practice, Ch. 464, *Public Entities and Officers: California Government Claims Act*, § 464.102 (Matthew Bender)

California Civil Practice: Torts § 12:22 (Thomson Reuters)

VF-400. Negligence—Single Defendant

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] negligent?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*]'s negligence a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [*name of plaintiff*]'s damages?

- [a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

- [b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

- [c. Past noneconomic loss, including [physical pain/mental suffering:]

\$_____]

- [d. Future noneconomic loss, including [physical pain/mental suffering:]

\$_____]

TOTAL \$_____]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-401. Negligence—Single Defendant—Plaintiff’s Negligence at Issue—Fault of Others Not at Issue

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] negligent?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*]'s negligence a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [*name of plaintiff*]'s total damages? Do not reduce the damages based on the fault, if any, of [*name of plaintiff*].

[a. Past economic loss

[lost earnings]	\$ _____]
[lost profits]	\$ _____]
[medical expenses]	\$ _____]
[other past economic loss]	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings]	\$ _____]
[lost profits]	\$ _____]
[medical expenses]	\$ _____]
[other future economic loss]	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

If *[name of plaintiff]* has proved any damages, then answer question 4. If *[name of plaintiff]* has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* negligent?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s negligence a substantial factor in causing *[his/her/nonbinary pronoun]* harm?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What percentage of responsibility for *[name of plaintiff]*'s harm do you assign to:

<i>[Name of defendant]:</i>	_____ %
<i>[Name of plaintiff]:</i>	_____ %
TOTAL	100 %

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*, and CACI No. 405, *Comparative Fault of Plaintiff*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-402. Negligence—Fault of Plaintiff and Others at Issue

We answer the questions submitted to us as follows:

1. Was [name of first defendant] negligent?

_____ Yes _____ No

Was [name of second defendant] negligent?

_____ Yes _____ No

[Repeat as necessary for other defendants.]

If you answered yes for any defendant in question 1, then answer question 2 for that defendant. If you answered no for any defendant in question 1, insert the number zero next to that defendant's name in question 8. If you answered no for all defendants in question 1, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. For each defendant that received a "yes" answer in question 1, answer the following:

Was [name of first defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

Was [name of second defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

[Repeat as necessary for other defendants.]

If you answered yes for any defendant in question 2, then answer question 3. If you answered no for any defendant in question 2, insert the number zero next to that defendant's name in question 8. If you did not answer yes for any defendant in question 2, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s total damages? Do not reduce the damages based on the fault, if any, of [name of plaintiff] or others.

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

If [name of plaintiff] has proved any damages, then answer question 4. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of plaintiff] negligent?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 8, skip question 5, and answer question 6.

5. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her/nonbinary pronoun] harm?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 8 and answer question 6.

6. Was [name/description of first nonparty] negligent?

_____ Yes _____ No

Was [name/description of second nonparty] negligent?

_____ Yes _____ No

[Repeat as necessary for other nonparties.]

If you answered yes for any person in question 6, then answer

question 7 for that person. If you answered no for any person in question 6, insert the number zero next to that person’s name in question 8. If you answered no for all persons in question 6, skip question 7 and answer question 8.

- 7. For each person who received a “yes” answer in question 6, answer the following:

Was [name/description of first nonparty]’s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

Was [name/description of second nonparty]’s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

[Repeat as necessary for other nonparties.]

If you answered yes for any person in question 7, then answer question 8. If you answered no for any person in question 7, then insert the number zero next to that person’s name in question 8 and answer question 8.

- 8. What percentage of responsibility for [name of plaintiff]’s harm do you assign to the following? Insert a percentage for only those who received “yes” answers in questions 2, 5, or 7:

[Name of first defendant]:	_____ %
[Name of second defendant]:	_____ %
[Name of plaintiff]:	_____ %
[Name/description of first non-party]:	_____ %
[Name/description of second nonparty]:	_____ %
TOTAL	100 %

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Directions for Use

This verdict form is based on CACI No. 400, *Negligence—Essential Factual Elements*, CACI No. 405, *Comparative Fault of Plaintiff*, and CACI No. 406, *Apportionment of Responsibility*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

This verdict form is designed for a single plaintiff, multiple defendants, and multiple nonparties who are alleged to have been negligent. If there are multiple plaintiffs, consider preparing a separate verdict form for each. If a coplaintiff is alleged to have been negligent and that coplaintiff's negligence is alleged to have harmed the plaintiff, treat the allegedly negligent coplaintiff as a nonparty in questions 6 and 7 and add the coplaintiff's name to the list of contributing persons in question 8 of the plaintiff's verdict form.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-403. Primary Assumption of Risk—Liability of Coparticipant

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* either intentionally injure *[name of plaintiff]* or act so recklessly that *[his/her/nonbinary pronoun]* conduct was entirely outside the range of ordinary activity involved in *[specify sport or activity, e.g., touch football]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2004, April 2007, April 2009, December 2010, December 2011, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 470, *Primary Assumption of Risk—Exception to Nonliability—Coparticipant in Sport or Other Recreational Activity*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2004, April 2007, December 2010, June 2012, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 471, *Primary Assumption of Risk—Exception to Nonliability—Instructors, Trainers, or Coaches*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award

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prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____	

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2015; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 472, *Primary Assumption of Risk—Exception to Nonliability—Facilities Owners and Operators and Event Sponsors*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-406. Negligence—Providing Alcoholic Beverages to Obviously Intoxicated Minor

We answer the questions submitted to us as follows:

1. [Was *[name of defendant]* [required to be] licensed to sell alcoholic beverages?]

[or]

[Was *[name of defendant]* authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave?]

_____ Yes _____ No]

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* [sell/ give] alcoholic beverages to *[name of alleged minor]*?]

_____ Yes _____ No]

[or]

[Did *[name of defendant]* cause alcoholic beverages to be [sold/ given away] to *[name of alleged minor]*?]

_____ Yes _____ No]

If your answer to either option for question 2 is yes, then answer question 3. If you answered no to both options, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of alleged minor]* less than 21 years old at the time?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. When *[name of defendant]* provided the alcoholic beverages, did *[name of alleged minor]* display symptoms that would lead a reasonable person to conclude that *[name of alleged minor]* was obviously intoxicated?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2009, December 2010, December 2014, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 422, *Providing Alcoholic Beverages to Obviously Intoxicated Minors*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Omit question 1 if the defendant is a person such as a social host who, though not required to be licensed, sells alcohol to an obviously intoxicated minor. (See *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 711 [168 Cal.Rptr.3d 440, 319 P.3d 201].)

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the comparative fault of the plaintiff is an issue, this form should be modified. See CACI No. VF-401, *Negligence—Single Defendant—Plaintiff’s Negligence at Issue—Fault of Others Not at Issue*, for a model form involving the issue of comparative fault.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**_____
*New September 2003; April 2007, December 2010, December 2016, May 2024***Directions for Use**

This verdict form is based on CACI No. 460, *Strict Liability for Ultrahazardous Activities—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 462, *Strict Liability for Injury Caused by Domestic Animal With Dangerous Propensities—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual

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findings that are required in order to calculate the amount of prejudgment interest.

VF-409. Dog Bite Statute (Civ. Code, § 3342)

We answer the questions submitted to us as follows:

1. Did [name of defendant]'s dog bite [name of plaintiff]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of plaintiff] in a public place or lawfully on private property when [he/she/nonbinary pronoun] was bitten?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the dog a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are the damages, if any, that [name of plaintiff] suffered as a result of the dog bite?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

- [c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]
 - [d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]
- TOTAL \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 463, *Dog Bite Statute (Civ. Code, § 3342)—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-410. Statute of Limitations—Delayed Discovery—Reasonable Investigation Would Not Have Disclosed Pertinent Facts

We answer the questions submitted to us as follows:

1. Did [name of plaintiff]’s claimed harm occur before [insert date from applicable statute of limitations]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Before [insert date from applicable statute of limitations], did [name of plaintiff] discover, or know of facts that would have caused a reasonable person to suspect, that [he/she/nonbinary pronoun/it] had suffered harm that was caused by someone’s wrongful conduct?

_____ Yes _____ No

[or]

2. Would a reasonable and diligent investigation have disclosed before [insert date from applicable statute of limitations] that [specify factual basis for cause of action] contributed to [name of plaintiff]’s harm?

_____ Yes _____ No

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2007; Revised December 2010, May 2022, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 454, *Affirmative Defense—Statute of Limitations*, and CACI No. 455, *Statute of Limitations—Delayed Discovery*. If the only issue is whether the plaintiff’s harm occurred before or after the limitation date, omit question 2. If the plaintiff claims that the delayed-discovery rule applies to

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save the action, use the first option for question 2. If the plaintiff claims that a reasonable investigation would not have disclosed the pertinent information before the limitation date, use the second option for question 2. If both delayed discovery and nondiscovery despite reasonable investigation are at issue, use both options and renumber them as question 2 and question 3.

The date to be inserted throughout is the applicable limitation period before the filing date. For example, if the limitation period is two years and the filing date is August 31, 2007, the date is August 31, 2005.

In question 1, “claimed harm” refers to all of the elements of the cause of action, which must have occurred before the cause of action accrues and the limitation period begins. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1029 [98 Cal.Rptr.2d 661].) In some cases, it may be necessary to modify this term to refer to specific facts that give rise to the cause of action.

The first option for question 2 may be modified to refer to specific facts that the plaintiff may have known.

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-405 December 2015; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 428, *Parental Liability (Nonstatutory)*. Questions 1 and 3 can be altered to correspond to one or both of the alternative bracketed option in elements 1 and 3 of CACI No. 428.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801,

814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-500. Medical Negligence

We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent in the diagnosis or treatment of [name of plaintiff]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]’s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 500, *Medical Negligence—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-501. Medical Negligence—Informed Consent—Affirmative Defense—Plaintiff Would Have Consented Even If Informed

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* give *[his/her/nonbinary pronoun]* informed consent for the *[insert medical procedure]*?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if that person had been adequately informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would *[name of plaintiff]* have consented to the *[insert medical procedure]* even if *[he/she/nonbinary pronoun]* had been given adequate information about the risks of the *[insert medical procedure]*?

_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you

answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2015, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements*, and CACI No. 550, *Affirmative Defense—Plaintiff Would Have Consented*.

The special verdict forms in this section are intended only as models. They may

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need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the affirmative defense, which is contained in question 4, is not an issue in the case, question 4 should be omitted and the remaining questions renumbered accordingly.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-502. Medical Negligence—Informed Consent—Affirmative
Defense—Emergency**

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* give *[his/her/nonbinary pronoun]* informed consent to the *[insert medical procedure]*?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if that person had been fully informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* reasonably believe the *[insert medical procedure]* had to be done immediately in order to preserve the life or health of *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 7. If you answered yes to this question, answer question 6.

Consent—Essential Factual Elements, and CACI No. 554, Affirmative Defense—Emergency.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Depending on the facts, alternative language may be substituted for question 6 as in item 2 of CACI No. 554. If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the affirmative defense, which is contained in questions 5 and 6, is not an issue in the case, then questions 5 and 6 should be omitted and the remaining questions renumbered accordingly.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-700. Motor Vehicle Owner Liability—Permissive Use of Vehicle

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] an owner of the vehicle at the time of the injury to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*], by words or conduct, give permission to [*name of driver*] to use the vehicle?

_____ Yes _____ No

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

This is for use in conjunction with the general negligence verdict forms involving motor vehicles. The two questions here should be incorporated into the verdict form regarding the underlying case. The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 720, *Motor Vehicle Owner Liability—Permissive Use of Vehicle*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

**VF-701. Motor Vehicle Owner Liability—Permissive Use of
Vehicle—Affirmative Defense—Use Beyond Scope of Permission**

We answer the questions submitted to us as follows:

1. Was [name of defendant] an owner of the vehicle at the time of the injury to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant], by words or conduct, give permission to [name of driver] to use the vehicle?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]’s permission to use the vehicle given for a limited time, place, or purpose?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [name of driver]’s use of the vehicle substantially violate the limitations as to time, place, or purpose?

_____ Yes _____ No

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

This is for use in conjunction with the general negligence verdict forms involving motor vehicles. The four questions here should be incorporated into the verdict form

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regarding the underlying case. The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 720, *Motor Vehicle Owner Liability—Permissive Use of Vehicle*, and CACI No. 721, *Motor Vehicle Owner Liability—Affirmative Defense—Use Beyond Scope of Permission*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

- [c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]
 - [d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]
- TOTAL \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised October 2004, April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 722, *Adult’s Liability for Minor’s Permissive Use of Motor Vehicle*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 723, *Liability of Cosigner of Minor’s Application for Driver’s License*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*.

This verdict form may need to be augmented for the jury to make any factual

findings that are required in order to calculate the amount of prejudgment interest.

VF-704. Negligent Entrustment of Motor Vehicle

We answer the questions submitted to us as follows:

1. Was [*name of driver*] negligent in operating the vehicle?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] own the vehicle operated by [*name of driver*] or did [*name of defendant*] have possession of the vehicle operated by [*name of driver*] with the owner's permission?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know, or should [*he/she/nonbinary pronoun*] have known, that [*name of driver*] was incompetent or unfit to drive?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] permit [*name of driver*] to drive the vehicle?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of driver*]'s incompetence or unfitness to drive a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2011, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 724, *Negligent Entrustment of Motor Vehicle*. Modify to include elements of negligence instruction against the driver if plaintiff is suing both driver and owner.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

VF-704

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

1002. Extent of Control Over Premises Area

[Name of plaintiff] claims that [name of defendant] controlled the property involved in [name of plaintiff]’s harm, even though [name of defendant] did not own or lease it. A person controls property that the person does not own or lease when the person uses the property as if it were the person’s own. A person is responsible for maintaining, in reasonably safe condition, all areas that person controls.

New September 2003; Revised May 2020

Directions for Use

Use this instruction only for property that is not actually owned or leased by the defendant.

Sources and Authority

- “[A] defendant’s duty to maintain land in a reasonably safe condition extends to land over which the defendant exercises control, regardless of who owns the land. ‘As long as the defendant exercised control over the land, the location of the property line would not affect the defendant’s potential liability.’ ” (*University of Southern California v. Superior Court* (2018) 30 Cal.App.5th 429, 445 [241 Cal.Rptr.3d 616], internal citation omitted.)
- “Even if a hazard located on publicly owned property is created by a third party, an abutting owner or occupier of private property will be held liable for injuries caused by that hazard if the owner or occupier has ‘“dramati[cally] assert[ed]” ’ any of the ‘“right[s] normally associated with ownership or . . . possession” ’ by undertaking affirmative acts that are consistent with being the owner or occupier of the property and that go beyond the ‘minimal, neighborly maintenance of property owned by another.’ ” (*Lopez v. City of Los Angeles* (2020) 55 Cal.App.5th 244, 258 [269 Cal.Rptr.3d 377].)
- “In *Alcaraz* . . . , our Supreme Court held that a landowner who exercises control over an adjoining strip of land has a duty to protect or warn others entering the adjacent land of a known hazard there. This duty arises even if the person does not own or exercise control over the hazard and even if the person does not own the abutting property on which the hazard is located. . . . [9] The *Alcaraz* court concluded that such evidence was ‘sufficient to raise a triable issue of fact as to whether defendants exercised control over the strip of land containing the meter box and thus owed a duty of care to protect or warn plaintiff of the allegedly dangerous condition of the property.’ ” (*Contreras v. Anderson* (1997) 59 Cal.App.4th 188, 197–198 [69 Cal.Rptr.2d 69], footnote and internal citations omitted.)
- “[A] defendant cannot be held liable for the defective or dangerous condition of property which it [does] not own, possess, or control.’ Thus, “[a] tenant

CACI No. 1002

ordinarily is not liable for injuries to his invitees occurring outside the leased premises on common passageways over which he has no control. [Citations.] Responsibility in such cases rests on the owner, who has the right of control and the duty to maintain that part of the premises in a safe condition. It is clear, however, that if the tenant exercises control over a common passageway outside the leased premises, he may become liable to his business invitees if he fails to warn them of a dangerous condition existing thereon.” ’ The “crucial element is control.” ’ ’ (Moses v. Roger-McKeever (2023) 91 Cal.App.5th 172, 179 [308 Cal.Rptr.3d 149], internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1225, 1226

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, § 15.03 (Matthew Bender)

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, §§ 381.03–381.04 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability*, § 421.15 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability*, § 178.60 et seq. (Matthew Bender)

1 California Civil Practice: Torts § 16:2 (Thomson Reuters)

1009A. Liability to Employees of Independent Contractors for Unsafe Concealed Conditions

[Name of plaintiff] claims that [he/she/nonbinary pronoun] was harmed by an unsafe concealed condition while employed by [name of plaintiff's employer] and working on [name of defendant]'s property. To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of defendant] [owned/leased/occupied/controlled] the property;**
- 2. That [name of defendant] knew, or reasonably should have known, of a preexisting unsafe concealed condition on the property;**
- 3. That [name of plaintiff's employer] neither knew nor could be reasonably expected to know of the unsafe concealed condition;**
- 4. That the condition was not part of the work that [name of plaintiff's employer] was hired to perform;**
- 5. That [name of defendant] failed to warn [name of plaintiff's employer] of the condition;**
- 6. That [name of plaintiff] was harmed; and**
- 7. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.**

An unsafe condition is concealed if either it is not visible or its dangerous nature is not apparent to a reasonable person.

*Derived from former CACI No. 1009 April 2007; Revised April 2009, December 2011, May 2024**

Directions for Use

This instruction is for use if a concealed dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. For an instruction for injuries to others due to a concealed condition, see CACI No. 1003, *Unsafe Conditions*.

Elements 3 and 4 express the independent contractor's limited duty to inspect the premises for potential safety hazards. (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 53–54 [282 Cal.Rptr.3d 658, 493 P.3d 212].)

For an instruction for injuries to others due to a concealed condition, see CACI No. 1003, *Unsafe Conditions*. For an instruction for injuries based on the hirer's retained control over the contractor's performance of work, see CACI No. 1009B, *Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control*. For an instruction for injuries based on the property owner providing defective

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equipment, see CACI No. 1009D, *Liability to Employees of Independent Contractors for Unsafe Conditions—Defective Equipment*.

See also the Vicarious Responsibility Series, CACI No. 3700 et seq., for instructions on the liability of a hirer for the acts of an independent contractor.

Sources and Authority

- “[T]he hirer as landowner may be independently liable to the contractor’s employee, even if it does not retain control over the work, if: (1) it knows or reasonably should know of a concealed, preexisting hazardous condition on its premises; (2) the contractor does not know and could not reasonably ascertain the condition; and (3) the landowner fails to warn the contractor.” (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 675 [36 Cal.Rptr.3d 495, 123 P.3d 931].)
- “[T]here is no reason to distinguish conceptually between premises liability based on a hazardous substance that is concealed because it is invisible to the contractor and known only to the landowner and premises liability based on a hazardous substance that is visible but is known to be hazardous only to the landowner. If the hazard is not reasonably apparent, and is known only to the landowner, it is a concealed hazard, whether or not the substance creating the hazard is visible.” (*Kinsman, supra*, 37 Cal.4th at p. 678.)
- “A landowner’s duty generally includes a duty to inspect for concealed hazards. But the responsibility for job safety delegated to independent contractors may and generally does include explicitly or implicitly a limited duty to inspect the premises as well. Therefore, . . . the landowner would not be liable when the contractor has failed to engage in inspections of the premises implicitly or explicitly delegated to it. Thus, for example, an employee of a roofing contractor sent to repair a defective roof would generally not be able to sue the hirer if injured when he fell through the same roof due to a structural defect, inasmuch as inspection for such defects could reasonably be implied to be within the scope of the contractor’s employment. On the other hand, if the same employee fell from a ladder because the wall on which the ladder was propped collapsed, assuming that this defect was not related to the roof under repair, the employee may be able to sustain a suit against the hirer. Put in other terms, the contractor was not being paid to inspect the premises generally, and therefore the duty of general inspection could not be said to have been delegated to it. Under those circumstances, the landowner’s failure to reasonably inspect the premises, when a hidden hazard leads directly to the employee’s injury, may well result in liability.” (*Kinsman, supra*, 37 Cal.4th at pp. 677–678, internal citations omitted.)
- “We emphasize that our holding applies only to hazards on the premises of which the independent contractor is aware or should reasonably detect. Although we recognized in *Kinsman* that the delegation of responsibility for workplace safety to independent contractors may include a limited duty to inspect the premises, it would not be reasonable to expect [an independent contractor] to identify every conceivable dangerous condition on the roof given that he is not a licensed roofer and was not hired to repair the roof.” (*Gonzalez, supra*, 12

Cal.5th at p. 54, internal citations omitted.)

- “[T]he initial formulation of the *Kinsman* test asks whether the independent contractor could reasonably have discovered the latent hazardous condition; the gloss on the test for obvious hazards asks whether knowledge of the hazard is inadequate to prevent injury. Both of these tests are defeated where, as here, there is undisputed evidence that the hazard could reasonably have been discovered (by inspecting the ladder) and, once discovered, avoided (by getting another ladder).” (*Johnson v. Raytheon Co.* (2019) 33 Cal.App.5th 617, 632 [245 Cal.Rptr.3d 282].)
- “The court also told the jury that [defendant] was liable if its negligent use or maintenance of the property was a substantial factor in harming [plaintiff] (see CACI Nos. 1000, 1001, 1003 & 1011). These instructions were erroneous because they did not say that these principles would only apply to [defendant] if the hazard was concealed.” (*Alaniz v. Sun Pacific Shippers, L.P.* (2020) 48 Cal.App.5th 332, 338–339 [261 Cal.Rptr.3d 702].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1259 et seq.

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 6-A, *Liability For Defective Conditions On Premises*, ¶¶ 6:4, 6:9.12 (The Rutter Group)

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, §§ 15.04[4], 15.08 (Matthew Bender)

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, § 381.20 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability*, §§ 421.11–421.12 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability*, § 178.20 et seq. (Matthew Bender)

- [c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]
- [d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]
- TOTAL \$_____**

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1001. Premises Liability—Affirmative Defense—Recreation
Immunity—Exceptions**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [own/lease/occupy/control] the property?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] negligent in the [use/maintenance] of the property?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of defendant*]'s negligence a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff/name of person causing injury*] enter on or use [*name of defendant*]'s property for a recreational purpose?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Did [*name of defendant*] willfully or maliciously fail to protect others from or warn others about a dangerous [condition/use/structure/activity] on the property?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ _____]
 [lost profits \$ _____]
 [medical expenses \$ _____]
 [other past economic \$ _____]
 loss

Total Past Economic Damages: \$
 _____]

[b. Future economic loss

[lost earnings \$ _____]
 [lost profits \$ _____]
 [medical expenses \$ _____]
 [other future economic loss \$ _____]

Total Future Economic Damages: \$
 _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, October 2008, December 2010, December 2014, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*, and CACI No. 1010, *Affirmative Defense—Recreation Immunity—Exceptions*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

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If either of the other two exceptions to recreational immunity from Civil Code section 846 is at issue, question 5 should be replaced with appropriate language for the applicable exception. (See CACI No. 1010.)

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

If [name of plaintiff] has proved any damages, then answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] also negligent?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her/nonbinary pronoun] harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What percentage of responsibility for [name of plaintiff]'s harm do you assign to the following?

[Name of defendant]: _____ %

[Name of plaintiff]: _____ %

TOTAL 100 %

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Directions for Use

This verdict form is based on CACI No. 1000, *Premises Liability—Essential Factual Elements*, CACI No. 405, *Comparative Fault of Plaintiff*, and CACI No. 406, *Apportionment of Responsibility*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1100. Dangerous Condition of Public Property

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] own [or control] the property?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the property in a dangerous condition at the time of the injury?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the dangerous condition create a reasonably foreseeable risk that this kind of injury would occur?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. [Did the negligent or wrongful conduct of [*name of defendant*]'s employee acting within the scope of employment create the dangerous condition?]

[or]

[Did [*name of defendant*] have notice of the dangerous condition for a long enough time for [*name of defendant*] to have protected against it?]

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the dangerous condition a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1100, *Dangerous Condition on Public Property—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in

VF-1100

question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1101. Dangerous Condition of Public Property—Affirmative Defense—Reasonable Act or Omission (Gov. Code, § 835.4)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] own [or control] the property?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the property in a dangerous condition at the time of the incident?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the dangerous condition create a reasonably foreseeable risk that this kind of incident would occur?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. [Did negligent or wrongful conduct of [*name of defendant*]'s employee acting within the scope of the employee's employment create the dangerous condition?]

_____ Yes _____ No

[or]

[Did [*name of defendant*] have notice of the dangerous condition for a long enough time to have protected against it?]

_____ Yes _____ No

If your answer to [either option for] question 4 is yes, then answer question 5. If you answered no [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the dangerous condition a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. [Answer if you answered yes to the first option for question 4: When you consider the likelihood and seriousness of potential injury, compared with the practicality and cost of either (a) taking alternative action that would not have created the risk of injury, or (b) protecting against the risk of injury, was *[name of defendant]*'s *[act/specify failure to act]* that created the dangerous condition reasonable under the circumstances?]

_____ Yes _____ No

[or]

[Answer if you answered yes to the second option for question 4: When you consider the likelihood and seriousness of potential injury, compared with (a) how much time and opportunity *[name of defendant]* had to take action, and (b) the practicality and cost of protecting against the risk of injury, was *[name of defendant]*'s failure to take sufficient steps to protect against the risk of injury created by the dangerous condition reasonable under the circumstances?]

_____ Yes _____ No

If your answer to [either option for] question 6 is no, then answer question 7. If you answered yes [to both options], stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$_____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, June 2010, December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1100, *Dangerous Condition on Public Property—Essential Factual Elements*, CACI No. 1111, *Affirmative Defense—Condition Created by Reasonable Act or Omission*, and CACI No. 1112, *Affirmative Defense—Reasonable Act or Omission to Correct*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

For questions 4 and 6, choose the first bracketed options if liability is alleged because of an employee's negligent conduct under Government Code section 835(a). Use the second bracketed options if liability is alleged for failure to act after actual or constructive notice under Government Code section 835(b). Both options may be given if the plaintiff is proceeding under both theories of liability.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

1204. Strict Liability—Design Defect—Risk-Benefit Test—Essential Factual Elements—Shifting Burden of Proof

[Name of plaintiff] claims that the *[product]*'s design caused harm to *[name of plaintiff]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* [manufactured/distributed/sold] the *[product]*;
2. That *[name of plaintiff]* was harmed; and
3. That the *[product]*'s design was a substantial factor in causing harm to *[name of plaintiff]*.

If *[name of plaintiff]* has proved these three facts, then your decision on this claim must be for *[name of plaintiff]* unless *[name of defendant]* proves that the benefits of the *[product]*'s design outweigh the risks of the design. In deciding whether the benefits outweigh the risks, you should consider the following:

- (a) The gravity of the potential harm resulting from the use of the *[product]*;
- (b) The likelihood that this harm would occur;
- (c) The feasibility of an alternative safer design at the time of manufacture;
- (d) The cost of an alternative design; [and]
- (e) The disadvantages of an alternative design; [and]
- (f) *[Other relevant factor(s)].*

New September 2003; Revised February 2007, April 2009, December 2009, December 2010, June 2011, January 2018, May 2019, May 2020

Directions for Use

The consumer expectation test and the risk-benefit test for design defect are not mutually exclusive, and depending on the facts and circumstances of the case, both may be presented to the trier of fact in the same case. (*Demara v. The Raymond Corp.* (2017) 13 Cal.App.5th 545, 554 [221 Cal.Rptr.3d 102].) If the plaintiff asserts both tests, the instructions must make it clear that the two tests are alternatives. (*Bracisco v. Beech Aircraft Corp.* (1984) 159 Cal.App.3d 1101, 1106–1107 [206 Cal.Rptr. 431].) Risk-benefit weighing is not a formal part of, nor may it serve as a defense to, the consumer expectations test. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1303 [144 Cal.Rptr.3d 326].)

To make a prima facie case, the plaintiff has the initial burden of producing evidence that the plaintiff was injured while the product was being used in an intended or reasonably foreseeable manner. If this prima facie burden is met, the burden of proof shifts to the defendant to prove that the plaintiff's injury resulted from a misuse of the product. (See *Perez v. VAS S.p.A.* (2010) 188 Cal.App.4th 658, 678 [115 Cal.Rptr.3d 590]; see also CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*.) Product misuse is a complete defense to strict products liability if the defendant proves that an unforeseeable abuse or alteration of the product after it left the manufacturer's hands was the sole cause of the plaintiff's injury. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 56 [148 Cal.Rptr. 596, 583 P.2d 121]; see CACI No. 1245.) Misuse or modification that was a substantial factor in, but not the sole cause of, plaintiff's harm may also be considered in determining the comparative fault of the plaintiff or of third persons. See CACI No. 1207A, *Strict Liability—Comparative Fault of Plaintiff*, and CACI No. 1207B, *Strict Liability—Comparative Fault of Third Person*.

If evidence of industry custom and practice has been admitted for a limited purpose, at the timely request of a party opposing this evidence, the jury must be given a limiting instruction on how this evidence may and may not be considered under the risk-benefit test. (See *Kim v. Toyota Motor Corp.* (2018) 6 Cal.5th 21, 30, 38 [237 Cal.Rptr.3d 205, 424 P.3d 290].)

Aesthetics might be an additional factor to be considered in an appropriate case in which there is evidence that appearance is important in the marketability of the product. (See *Bell v. Bayerische Motoren Werke Aktiengesellschaft* (2010) 181 Cal.App.4th 1108, 1131 [105 Cal.Rptr.3d 485].)

Sources and Authority

- “A manufacturer, distributor, or retailer is liable in tort if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way.” (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 560 [34 Cal.Rptr.2d 607, 882 P.2d 298].)
- “[T]he term defect as utilized in the strict liability context is neither self-defining nor susceptible to a single definition applicable in all contexts.” (*Johnson v. United States Steel Corp.* (2015) 240 Cal.App.4th 22, 31 [192 Cal.Rptr.3d 158].)
- “The risk-benefit test requires the plaintiff to first ‘demonstrate[] that the product’s design proximately caused his injury.’ If the plaintiff makes this initial showing, the defendant must then ‘establish, in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design.’” (*Kim, supra*, 6 Cal.5th at p. 30, internal citation omitted.)
- “Appellants are therefore correct in asserting that it was not their burden to show that the risks involved in the loader’s design—the lack of mechanical safety devices, or of a warning—outweighed the benefits of these aspects of its designs. The trial court’s instruction to the jury, which quite likely would have been understood to place this burden on appellants, was therefore an error.” (*Lunghi v.*

Clark Equipment Co., Inc. (1984) 153 Cal.App.3d 485, 497–498 [200 Cal.Rptr. 387], internal citations omitted.)

- “[U]nder the risk/benefit test, the plaintiff may establish the product is defective by showing that its design proximately caused his injury and the defendant then fails to establish that on balance the benefits of the challenged design outweigh the risk of danger inherent in such design. In such case, the jury must evaluate the product’s design by considering the gravity of the danger posed by the design, the likelihood such danger would occur, the feasibility of a safer alternative design, the financial cost of an improved design, and the adverse consequences to the consumer resulting from an alternative design. ‘In such cases, the jury must consider the manufacturer’s evidence of competing design considerations . . . , and the issue of design defect cannot fairly be resolved by standardless reference to the “expectations” of an “ordinary consumer.” ’ ” (*Saller v. Crown Cork & Seal Co., Inc.* (2010) 187 Cal.App.4th 1220, 1233 [115 Cal.Rptr.3d 151], internal citations omitted.)
- “[T]he defendant’s burden is one ‘affecting the burden of proof, rather than simply the burden of producing evidence.’ ” (*Moreno v. Fey Manufacturing Corp.* (1983) 149 Cal.App.3d 23, 27 [196 Cal.Rptr. 487].)
- “The [consumer-expectation and risk-benefit] tests provide alternative means for a plaintiff to prove design defect and do not serve as defenses to one another. A product may be defective under the consumer expectation test even if the benefits of the design outweigh the risks. [Citation.] On the other hand, a product may be defective if it satisfies consumer expectations but contains an excessively preventable danger in that the risks of the design outweigh its benefits.” (*Chavez, supra*, 207 Cal.App.4th at p. 1303.)
- “Under *Barker*, in short, the plaintiff bears an initial burden of making ‘a prima facie showing that the injury was proximately caused by the product’s design.’ This showing requires evidence that the plaintiff was injured *while using the product in an intended or reasonably foreseeable manner* and that the plaintiff’s ability to avoid injury was frustrated by the absence of a safety device, or by the nature of the product’s design. If this prima facie burden is met, the burden of proof shifts to the defendant to prove, in light of the relevant factors, that the product is not defective. Importantly, the plaintiff’s prima facie burden of producing evidence that injury occurred while the product was being used in an intended or reasonably foreseeable manner must be distinguished from the ultimate burden of proof that rests with the defendant to establish that its product was not defective because the plaintiff’s injury resulted from a misuse of the product.” (*Perez, supra*, 188 Cal.App.4th at p. 678, original italics, internal citations omitted.)
- “[I]n evaluating the adequacy of a product’s design pursuant to [the risk-benefit] standard, a jury may consider, among other relevant factors, the gravity of the danger posed by the challenged design, the likelihood that such danger would occur, the mechanical feasibility of a safer alternative design, the financial cost of an improved design, and the adverse consequences to the product and to

the consumer that would result from an alternative design.’ ” (*Gonzalez v. Autoliv ASP, Inc.* (2007) 154 Cal.App.4th 780, 786–787 [64 Cal.Rptr.3d 908], internal citations omitted.)

- “[E]xpert evidence about compliance with industry standards can be considered on the issue of defective design, in light of all other relevant circumstances, even if such compliance is not a complete defense. An action on a design defect theory can be prosecuted and defended through expert testimony that is addressed to the elements of such a claim, including risk-benefit considerations.” (*Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 426 [136 Cal.Rptr.3d 739].)
- “In some defective design cases, ‘the feasibility of a reasonable alternative design is obvious and understandable to laypersons and therefore expert testimony is unnecessary to support a finding that the product should have been designed differently and more safely. For example, when a manufacturer sells a soft stuffed toy with hard plastic buttons that are easily removable and likely to choke and suffocate a small child who foreseeably attempts to swallow them, the plaintiff should be able to reach the trier of fact . . . without hiring an expert to demonstrate the feasibility of an alternative safer design.’ ” (*Camacho v. JLG Industries Inc.* (2023) 93 Cal.App.5th 809, 816 [311 Cal.Rptr.3d 372], internal citation omitted.)
- “We stress that while industry custom and practice evidence is not categorically inadmissible, neither is it categorically admissible; its admissibility will depend on application of the ordinary rules of evidence in the circumstances of the case. . . . First, the party seeking admission of such evidence must establish its relevance to at least one of the elements of the risk-benefit test, either causation or the *Barker* factors. The evidence is relevant to the *Barker* inquiry if it sheds light on whether, objectively speaking, the product was designed as safely as it should have been, given ‘the complexity of, and trade-offs implicit in, the design process.’ Whether the evidence serves this purpose depends on whether, under the circumstances of the case, it is reasonable to conclude that other manufacturers’ choices do, as the Court of Appeal put it, ‘reflect legitimate, independent research and practical experience regarding the appropriate balance of product safety, cost, and functionality.’ If the proponent of the evidence establishes a sufficient basis for drawing such a conclusion, the evidence is admissible, even though one side or the other may argue it is entitled to little weight because industry participants have weighed the relevant considerations incorrectly. The evidence may not, however, be introduced simply for the purpose of showing the manufacturer was acting no worse than its competitors.” (*Kim, supra*, 6 Cal.5th at p. 37, internal citations omitted.)
- “[I]f the party opposing admission of this evidence makes a timely request, the trial court must issue a jury instruction that explains how this evidence may and may not be considered under the risk-benefit test.” (*Kim, supra*, 6 Cal.5th at p. 38.)
- “Plaintiffs contend aesthetics is not a proper consideration in the risk-benefit

CACI No. 1204

analysis, and the trial court’s ruling to the contrary was an ‘[e]rror in law.’ We disagree. In our view, much of the perceived benefit of a car lies in its appearance. A car is not a strictly utilitarian product. We believe that a jury properly may consider aesthetics in balancing the benefits of a challenged design against the risk of danger inherent in the design. Although consideration of the disadvantages of an alternative design (CACI No. 1204, factor (e)) would encompass any impact on aesthetics, we conclude that there was no error in the trial court’s approval of the modification listing aesthetics as a relevant factor.” (*Bell, supra*, 181 Cal.App.4th at p. 1131, internal citations omitted.)

- “Taken together, section 2, subdivision (b), and section 5 of the Restatement indicate that a component part manufacturer may be held liable for a defect in the component. When viewed in its entirety, the Restatement does not support [defendant]’s argument that ‘[o]nly if the component part analysis establishes sufficient control over the design of the alleged defect should the component manufacturer be held to the standard of the risk-benefit test.’ Instead, the test considering foreseeable risks of harm and alternative designs is applied to the component part manufacturer when the alleged defect is in the component.” (*Gonzalez, supra*, 154 Cal.App.4th at pp. 789–790.)
- “Where liability depends on the proof of a design defect, no practical difference exists between negligence and strict liability; the claims merge.” (*Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1185 [79 Cal.Rptr.2d 657].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1621–1630

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1223–2:1224 (The Rutter Group)

California Products Liability Actions, Ch. 7, *Proof*, § 7.02 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, § 460.11 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, §§ 190.111-190.114 (Matthew Bender)

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

If [name of plaintiff] has proved any damages, answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] negligent?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 9 and answer question 7.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her/nonbinary pronoun] harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer questions 7 and 9. If you answered no, insert the number zero next to [name of plaintiff]'s name in question 9 and answer question 7.

7. Was [name/description of other person] negligent?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, insert the number zero next to [name/description of other person]'s name in question 9.

8. Was [name/description of other person]'s negligence a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, insert the number zero next to [name/description of other person]'s name in question 9.

9. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:

[Name of defendant]:	_____ %
[Name of plaintiff]:	_____ %
[Name/description of other person]:	_____ %
TOTAL	100 %

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, June 2011, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1201, *Strict Liability—Manufacturing Defect—Essential Factual Elements*, CACI No. 1207A, *Strict Liability—Comparative Fault of Plaintiff*, and CACI No. 1207B, *Strict Liability—Comparative Fault of Third Person*. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*), questions 2 and 3 of CACI No. VF-1201, *Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification*, may be included after question 1.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the negligence or fault of more than one third person is alleged to have contributed to the plaintiff's injury, repeat questions 7 and 8.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1201. Strict Products Liability—Design Defect—Affirmative
Defense—Misuse or Modification**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the [*product*] [misused/ [or] modified] after it left [*name of defendant*]'s possession in a way that was so highly extraordinary that it was not reasonably foreseeable to [him/her/*nonbinary pronoun/it*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Was the [misuse/ [or] modification] the sole cause of [*name of plaintiff*]'s harm?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [4. Is the [*product*] one about which an ordinary consumer can form reasonable minimum safety expectations?

_____ Yes _____ No

If your answer to question 4 is yes, answer question 5. If your answer is no, skip question 5 and answer question 6.]

- [5. Did the [*product*] fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?

_____ Yes _____ No

Regardless of your answer to question 5, answer question 6.]

- [6. Did the benefits of the [*product*]'s design outweigh the risks of the design?

_____ Yes _____ No

the [clerk/bailiff/court attendant].

New September 2003; Revised October 2004, April 2007, April 2009, December 2010, June 2011, December 2011, December 2014, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1203, *Strict Liability—Design Defect—Consumer Expectation Test—Essential Factual Elements*, CACI No. 1204, *Strict Liability—Design Defect—Risk-Benefit Test—Essential Factual Elements—Shifting Burden of Proof*, and CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*. If the comparative fault or negligence of the plaintiff or of third persons is at issue, questions 6 through 9 of CACI No. VF-1200, *Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue*, may be added at the end.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form can be used in a case in which the jury will decide design defect under both the consumer expectation and the risk-benefit tests. If only the risk-benefit test is at issue, omit questions 4 and 5. If only the consumer expectation test is at issue, omit question 6. Modify the transitional language following questions 5 and 6 if only one test is at issue in the case. Include question 4 if the court has decided to give to the jury the preliminary question as to whether the consumer expectation test can be applied to the product at issue in the case. (See *Saller v. Crown Cork & Seal Co., Inc.* (2010) 187 Cal.App.4th 1220, 1233–1234 [115 Cal.Rptr.3d 151].) An additional question may be needed if the defendant claims that the plaintiff's injuries were caused by some product other than the defendant's.

If specificity is not required, users do not have to itemize all the damages listed in question 8. The breakdown is optional depending on the circumstances.

If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1203. Strict Products Liability—Failure to Warn

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [*product*] have potential [risks/side effects/allergic reactions] that were [known/ [or] knowable in light of the [scientific/ [and] medical] knowledge that was generally accepted in the scientific community] at the time of [manufacture/distribution/sale]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the potential [risks/side effects/allergic reactions] present a substantial danger to persons using or misusing the [*product*] in an intended or reasonably foreseeable way?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would ordinary consumers have recognized the potential [risks/side effects/allergic reactions]?

_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to adequately warn [or instruct] of the potential [risks/side effects/allergic reactions]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*. If product misuse or modification is alleged as a complete defense (see CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*), questions 2 and 3 of CACI No. VF-1201, *Strict Products Liability—Design Defect—Consumer Expectation Test—Affirmative Defense—Misuse or Modification*, may be included after question 1. If the comparative fault or negligence of the plaintiff or of third persons is at issue, questions 7 through 9 of CACI No. VF-1200, *Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue*, may be added at the end.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

If [name of plaintiff] has proved any damages, answer question 5. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of plaintiff] negligent?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her/nonbinary pronoun] harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:

[Name of defendant]: _____ %

[Name of plaintiff]: _____ %

TOTAL 100 %

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

VF-1204

New September 2003; Revised April 2007, December 2009, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1220, *Negligence—Essential Factual Elements*, and CACI No. 405, *Comparative Fault of Plaintiff*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1205. Products Liability—Negligent Failure to Warn

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [manufacture/distribute/sell] the *[product]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know or should *[he/she/nonbinary pronoun/it]* reasonably have known that the *[product]* was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know or should *[he/she/nonbinary pronoun/it]* reasonably have known that users would not realize the danger?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* fail to adequately warn of the danger [or instruct on the safe use of] the *[product]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would a reasonable [manufacturer/distributor/seller] under the same or similar circumstances have warned of the danger [or instructed on the safe use of] the *[product]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 1222, *Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1206. Products Liability—Express Warranty—Affirmative
Defense—Not “Basis of Bargain”**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] represent to [*name of plaintiff*] by a [*statement/description/sample/model/other*] that the [*product*] [*insert description of alleged express warranty*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the resulting bargain between the parties in which [*name of plaintiff*] decided to [*purchase/use*] the [*product*] based in any way on [*name of defendant*]’s [*statement/description/sample/model/other*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the [*product*] fail to [*perform*] [*or*] [*have the same quality*] as represented?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the failure of the [*product*] to [*perform*] [*or*] [*meet the quality*] as represented a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]’s damages?

[a. Past economic loss

[lost earnings \$ _____]

[lost profits \$ _____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised February 2005, April 2007, December 2010, June 2011, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1230, *Express Warranty—Essential Factual Elements*, and CACI No. 1240, *Affirmative Defense to Express Warranty—Not “Basis of Bargain.”*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Under various circumstances, the plaintiff must also prove that the plaintiff made a reasonable attempt to notify the defendant of the defect. Thus, if appropriate, the following question should be added before the question regarding the plaintiff’s harm: “Did [*name of plaintiff*] take reasonable steps to notify [*name of defendant*] within a reasonable time that the [*product*] [*was not/did not perform*] as requested?”

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

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If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

Do not include question 2 if the affirmative defense is not at issue.

**VF-1207. Products Liability—Implied Warranty of
Merchantability—Affirmative Defense—Exclusion of Implied
Warranties**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] buy the [*product*] from [*name of defendant*]?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] in the business of selling these goods?
_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the sale of the [*product*] include notice that would have made a buyer aware that it was being sold without any representations relating to the quality that a buyer would expect?
_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the [*product*] fit for the ordinary purposes for which such goods are used?
_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the failure of the [*product*] to have the expected quality a substantial factor in causing harm to [*name of plaintiff*]?
_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	
[b. Future economic loss	
[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____]	

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1231, *Implied Warranty of Merchantability—Essential Factual Elements*, and CACI No. 1242, *Affirmative Defense—Exclusion of Implied Warranties*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Under various circumstances, the plaintiff must also prove that the plaintiff made a reasonable attempt to notify the defendant of the defect. Thus, where appropriate, the following question should be added prior to the question regarding the plaintiff’s harm: “Did [name of plaintiff] take reasonable steps to notify [name of defendant]

within a reasonable time that the [*product*] [was not/did not perform] as requested?”

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

Question 2 should be modified if the defendant purported to have special knowledge or skill regarding the goods. Question 3 should be modified if a different ground of liability is asserted under Commercial Code section 2314(2). Question 6 should be modified if the defendant is asserting other grounds under Commercial Code section 2316(3). This form should also be modified if notification is an issue.

Do not include question 3 if the affirmative defense is not at issue.

VF-1208. Products Liability—Implied Warranty of Fitness for a Particular Purpose

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] buy the [*product*] from [*name of defendant*]?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. At the time of purchase, did [*name of defendant*] know or have reason to know that [*name of plaintiff*] intended to use the [*product*] for a particular purpose?
_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. At the time of purchase, did [*name of defendant*] know that [*name of plaintiff*] was relying on [*name of defendant*]’s skill and judgment to select or furnish a product that was suitable for the particular purpose?
_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] justifiably rely on [*name of defendant*]’s skill and judgment?
_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the [*product*] suitable for the particular purpose?
_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the failure of the [*product*] to be suitable a substantial factor

in causing harm to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$_____]

TOTAL \$_____]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 1232, *Implied Warranty of Fitness for a*
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Particular Purpose—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

Question 2 of this form should be modified if the defendant purported to have special knowledge or skill regarding the goods. Question 3 should be modified if a different ground of liability is asserted under Commercial Code section 2314(2). This form should also be modified if notification is an issue.

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$ _____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$ _____]
TOTAL \$ _____	

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised October 2004, April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Give the bracketed words in question 3 and bracketed question 4 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801,

814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1301. Battery—Self-Defense/Defense of Others at Issue

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* touch *[name of plaintiff]* [or] cause *[name of plaintiff]* to be touched with the intent to harm or offend *[him/her/nonbinary pronoun]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* consent to be touched?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]* harmed [or offended] by *[name of defendant]*'s conduct?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [4. Would a reasonable person in *[name of plaintiff]*'s situation have been offended by the touching?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

5. Did *[name of defendant]* reasonably believe that *[name of plaintiff]* was going to harm *[him/her/nonbinary pronoun/[insert identification of other person]]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Did *[name of defendant]* use only the amount of force that was reasonably necessary to protect *[himself/herself/nonbinary pronoun/[insert identification of other person]]*?

_____ Yes _____ No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised October 2004, April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1300, *Battery—Essential Factual Elements*, and CACI No. 1304, *Self-Defense/Defense of Others*.

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The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Give the bracketed words in question 3 and bracketed question 4 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1302. Assault

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] act, intending to cause a harmful [or an offensive] contact with [*name of plaintiff*] or intending to place [him/her/nonbinary pronoun] in fear of a harmful or an offensive contact?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] reasonably believe that [he/she/nonbinary pronoun] was about to be touched in a harmful [or an offensive] manner?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

1. Did [*name of defendant*] threaten to touch [*name of plaintiff*] in a harmful [or an offensive] manner?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did it reasonably appear to [*name of plaintiff*] that [he/she/nonbinary pronoun] was about to be touched in a harmful [or an offensive] manner?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Did [*name of plaintiff*] consent to [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Directions for Use

This verdict form is based on CACI No. 1301, *Assault—Essential Factual Elements*. The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

As appropriate to the facts of the case, read one of the bracketed alternative sets of questions 1 and 2.

Give the bracketed words in question 2 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

*New September 2003; Revised April 2007, December 2010, December 2016;
Renumbered from CACI No. VF-1303 and Revised May 2021; Revised May 2024*

Directions for Use

This verdict form is based on CACI No. 1305A, *Battery by Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual

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findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New May 2021; Revised May 2024

Directions for Use

This verdict form is based on CACI No. 1305B, *Battery by Peace Officer (Deadly Force)—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

- Total Future Economic Damages: \$_____]**
- [c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$_____]
- [d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$_____]
- TOTAL \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1400, *No Arrest Involved—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*.

This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1400, *No Arrest Involved—Essential Factual Elements*, and CACI No. 1409, *Common Law Right to Detain for Investigation*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages,

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especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 2 to direct the jury to skip question 3 and answer question 4 if they find no harm. Then add a new question 4: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 3 that the jury should not answer question 4. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*, and CACI No. 1402, *False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages,

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1403, *False Arrest Without Warrant by Private Citizen—Essential Factual Elements*, and CACI No. 1404, *False Arrest Without Warrant—Affirmative Defense—Private Citizen—Probable Cause to Arrest*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the

VF-1404

committee has found no cases requiring the jury to determine the amount of nominal damages.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1406. False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* arrest *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. *[Insert question regarding facts supporting the invalidity of the warrant or the unlawfulness of the arrest, e.g., “Had the warrant for [name of plaintiff]’s arrest expired?”]*

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would the arrest warrant have appeared valid to a reasonably intelligent and informed person?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Did *[name of defendant]* believe the warrant was valid?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Did *[name of defendant]* have a reasonable belief that *[name of plaintiff]* was the person referred to in the warrant?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]’s* conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you

answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1405, *False Arrest With Warrant—Essential Factual Elements*, and CACI No. 1406, *False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception*.

The special verdict forms in this section are intended only as models. They may

VF-1406

need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 6 to direct the jury to skip question 7 and answer question 8 if they find no harm. Then add a new question 8: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 7 that the jury should not answer question 8. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1407, *Unnecessary Delay in Processing/Releasing—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, December 2010, December 2016, May 2018, May 2024

Directions for Use

This verdict form is based on CACI No. 1500, *Former Criminal Proceeding*. This form can be adapted to include the affirmative defense of reliance on counsel. See VF-1502 for a form that includes this affirmative defense.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

In question 1, include the bracketed reference to prosecution if the arrest was without a warrant.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1500, *Former Criminal Proceeding*, elements 2 and 3.)

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual

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findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, December 2010, June 2011, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3).

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1502. Malicious Prosecution—Wrongful Use of Civil Proceedings—Affirmative Defense—Reliance on Counsel

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* actively involved in bringing [or continuing] the lawsuit against *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* make a full and honest disclosure of all the important facts known to *[him/her/nonbinary pronoun]* to *[his/her/nonbinary pronoun]* attorney?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did *[name of defendant]* reasonably rely on *[his/her/nonbinary pronoun]* attorney's advice?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* act primarily for a purpose other than succeeding on the merits of the claim?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*, and CACI No. 1510, *Affirmative Defense—Reliance on Counsel*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3.)

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages,

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1502, *Wrongful Use of Administrative Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1502, elements 3 and 4.)

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual

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forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1520, *Abuse of Process—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1601. Intentional Infliction of Emotional Distress—Affirmative Defense—Privileged Conduct

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] exercising [*his/her/nonbinary pronoun*] legal rights or protecting [*his/her/nonbinary pronoun*] economic interests?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, skip questions 2 and 3 and answer question 4.

2. Was [*name of defendant*]’s conduct lawful and consistent with community standards?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did [*name of defendant*] have a good-faith belief that [*he/she/nonbinary pronoun*] had a legal right to engage in the conduct?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]’s conduct outrageous?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. [Did [*name of defendant*] intend to cause [*name of plaintiff*] emotional distress?]

[or]

[Did [*name of defendant*] act with reckless disregard of the probability that [*name of plaintiff*] would suffer emotional distress, knowing that [*name of plaintiff*] was present when the conduct occurred?]

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you

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Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1600, *Intentional Infliction of Emotional Distress—Essential Factual Elements*, and CACI No. 1605, *Intentional Infliction of Emotional Distress—Affirmative Defense-Privileged Conduct*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1602. Intentional Infliction of Emotional Distress—Fear of
Cancer, HIV, or AIDS**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]*'s conduct outrageous?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s conduct expose *[name of plaintiff]* to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]*?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **[Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?] [or]**

[Did *[name of defendant]* act with reckless disregard of the probability that *[[name of plaintiff]/the group of individuals including *[name of plaintiff]*]* would suffer emotional distress, knowing that *[he/she/nonbinary pronoun/they]* *[was/were]* present when the conduct occurred?]

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* suffer severe emotional distress from a reasonable fear of developing *[insert cancer, HIV, or AIDS]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you

answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1601, *Intentional Infliction of Emotional Distress—Fear of Cancer, HIV, or AIDS*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1604. Negligence—Recovery of Damages for Emotional
Distress—No Physical Injury—Bystander**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] negligently cause [injury to/the death of] [*name of victim*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. When the [*describe event, e.g., traffic accident*] that caused [injury to/the death of] [*name of victim*] occurred, was [*name of plaintiff*] [virtually] present at the scene [through [*specify technological means*]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of plaintiff*] then aware that the [*e.g., traffic accident*] was causing [injury to/the death of] [*name of victim*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] suffer serious emotional distress?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s conduct a substantial factor in causing [*name of plaintiff*]'s serious emotional distress?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]**[b. Future economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].***New September 2003; Revised April 2007, December 2010, June 2014, December 2016, May 2022, May 2024***Directions for Use**

This verdict form is based on CACI No. 1621, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages,

VF-1604

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1606. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* exposed to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]* as a result of *[name of defendant]*'s conduct?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* act with *[malice/oppression/fraudulent intent]* because *[insert one or more of the following, as applicable:]*

[[name of defendant] intended to cause injury to [name of plaintiff]?] [or]

[[name of defendant]'s conduct was despicable and was carried out with a willful or conscious disregard of [name of plaintiff]'s rights or safety?] [or]

[[name of defendant]'s conduct was despicable and subjected [name of plaintiff] to cruel and unjust hardship in conscious disregard of [name of plaintiff]'s rights?] [or]

[[name of defendant] intentionally misrepresented or concealed a material fact known to [name of defendant], intending to cause [name of plaintiff] harm?]

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* suffer serious emotional distress from a fear, confirmed by reliable medical or scientific opinion, that *[name of plaintiff]'s risk of developing [insert applicable cancer, HIV, or AIDS]* was significantly increased by the exposure and has resulted in an actual risk that is significant?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 1623, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1700. Defamation per se (Public Officer/Figure and Limited Public Figure)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make the following statement to [a person/persons] other than [*name of plaintiff*]? [*Insert claimed per se defamatory statement.*]

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [this person/these people] reasonably understand the statement to mean that [*insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the statement false?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] prove by clear and convincing evidence that [*name of defendant*] knew the statement was false or had serious doubts about the truth of the statement?

_____ Yes _____ No

If your answer to question 5 is yes, then answer questions 6, 7, and 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff] actual harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]’s actual damages for:

[a. Harm to [name of plaintiff]’s property, business, trade, profession, or occupation? \$_____]

[b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$_____]

[c. Harm to [name of plaintiff]’s reputation? \$_____]

[d. Shame, mortification, or hurt feelings? \$_____]

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

ASSUMED DAMAGES

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her/nonbinary pronoun] reputation, and for shame, mortification, or hurt feelings? You must award at least a nominal sum.

\$ _____

PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Omit question 10 if the issue of punitive damages has been bifurcated.

If there is a dispute as to whether the statement in question 1 is one of fact or opinion, an additional question or questions will be needed. See CACI No. 1707, *Fact Versus Opinion*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1701. Defamation per quod (Public Officer/Figure and Limited Public Figure)

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Was the statement false?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?**

_____ **Yes** _____ **No**

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Is the statement, because of facts known to the people who heard or read it, the kind that would tend to injure [name of plaintiff] in [his/her/nonbinary pronoun] occupation?**

_____ **Yes** _____ **No**

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] suffer Harm to [his/her/nonbinary pronoun] property, business, profession, or occupation [including money spent as a result of the statement]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?

_____ Yes _____ No

If your answer to question 7 is yes, then answer questions 8. If you answered no, skip question 8 and answer question 9.

8. What are [name of plaintiff]'s actual damages?

[\$ _____]

PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2005, December 2010, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1701, *Defamation per quod—Essential*

VF-1701

Factual Elements (Public Officer/Figure and Limited Public Figure).

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 10 if the issue of punitive damages has been bifurcated.

If there is a dispute as to whether the statement in question 1 is one of fact or opinion, an additional question or questions will be needed. See CACI No. 1707, *Fact Versus Opinion*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1702. Defamation per se (Private Figure—Matter of Public Concern)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make the following statement to [a person/persons] other than [*name of plaintiff*]? [*Insert claimed per se defamatory statement.*]

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [this person/these people] reasonably understand the statement to mean that [*insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the statement false?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to use reasonable care to determine the truth or falsity of the statement?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff] actual harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]’s actual damages for:

- [a. Harm to [name of plaintiff]’s property, business, trade, profession, or occupation? \$_____]
- [b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$_____]
- [c. Harm to [name of plaintiff]’s reputation? \$_____]
- [d. Shame, mortification, or hurt feelings?. \$_____]

[If [name of plaintiff] has not proved any actual damages for either c or d, answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip questions 8 and 9 and answer question 10.]

ASSUMED DAMAGES

8. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are the damages you award [name of plaintiff] for the assumed harm to [his/her/nonbinary pronoun] reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.

\$ _____

Regardless of your answer to question 9, skip question 10 and answer question 11.

PUNITIVE DAMAGES

10. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?

_____ Yes _____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 11. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?**

_____ Yes _____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 12. What amount, if any, do you award as punitive damages against [name of defendant]?**

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1702, *Defamation per se—Essential Factual Elements (Private Figure—Matter of Public Concern)*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame, mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

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Omit question 12 if the issue of punitive damages has been bifurcated.

If there is a dispute as to whether the statement in question 1 is one of fact or opinion, an additional question or questions will be needed. See CACI No. 1707, *Fact Versus Opinion*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1703. Defamation per quod (Private Figure—Matter of Public Concern)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make the following statement to [a person/persons] other than [*name of plaintiff*]? [*Insert claimed per quod defamatory statement.*]

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the statement false?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] fail to use reasonable care to determine the truth or falsity of the statement?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Is the statement, because of facts known to the people who heard or read the statement, the kind of statement that would tend to injure [*name of plaintiff*] in [*his/her/nonbinary pronoun*] occupation?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* suffer Harm to *[his/her/nonbinary pronoun]* property, business, profession, or occupation *[including money spent as a result of the statement]*?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the statement a substantial factor in causing *[name of plaintiff]*'s harm?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

8. What are *[name of plaintiff]*'s actual damages?

[\$ _____]

If *[name of plaintiff]* has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 9.

PUNITIVE DAMAGES

9. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of defendant]* knew the statement was false or had serious doubts about the truth of the statement?

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. Has *[name of plaintiff]* proved by clear and convincing evidence that *[name of defendant]* acted with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. What amount, if any, do you award as punitive damages against *[name of defendant]*?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2005, December 2010, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1703, *Defamation per quod—Essential Factual Elements (Private Figure—Matter of Public Concern)*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1703, *Defamation per quod—Essential Factual Elements (Private Figure—Matter of Public Concern)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 11 if the issue of punitive damages has been bifurcated.

If there is a dispute as to whether the statement in question 1 is one of fact or opinion, an additional question or questions will be needed. See CACI No. 1707, *Fact Versus Opinion*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1704. Defamation per se—Affirmative Defense—Truth (Private Figure—Matter of Private Concern)

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Was the statement substantially true?**

_____ **Yes** _____ **No**

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?**

_____ **Yes** _____ **No**

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

6. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]'s actual damages for:

- [a. Harm to [name of plaintiff]'s property, business, trade, profession, or occupation? \$ _____]
- [b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$ _____]
- [c. Harm to [name of plaintiff]'s reputation? \$ _____]
- [d. Shame, mortification, or hurt feelings? \$ _____]

TOTAL \$ _____

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

ASSUMED DAMAGES

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her/nonbinary pronoun] reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.

\$ _____

Regardless of your answer to question 8, answer question 9.

PUNITIVE DAMAGES

9. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What amount, if any, do you award as punitive damages against [name of defendant]?

\$ _____

findings that are required in order to calculate the amount of prejudgment interest.

VF-1705. Defamation per quod (Private Figure—Matter of Private Concern)

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did the statement tend to injure [name of plaintiff] in [his/her/nonbinary pronoun] occupation?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did [name of plaintiff] suffer Harm to [his/her/nonbinary pronoun] property, business, profession, or occupation [including money spent as a result of the statement]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the statement a substantial factor in causing [name of plaintiff]'s harm?

_____ Yes _____ No

If your answer to question 6 is yes, then answer questions 7 and 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

ACTUAL DAMAGES

7. What are [name of plaintiff]'s actual damages?

[a. Past economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] had to pay as a result of the defamatory statements

\$ _____]

[b. Future economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] will have to pay as a result of the defamatory statements

\$ _____]

[c. Past noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ _____]

[d. Future noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ _____]

TOTAL \$ _____

If [name of plaintiff] has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 8.

PUNITIVE DAMAGES

8. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What amount, if any, do you award as punitive damages against
[name of defendant]?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify
the [clerk/bailiff/court attendant].

*New September 2003; Revised December 2005, December 2010, December 2016,
May 2017, May 2024*

Directions for Use

This verdict form is based on CACI No. 1703, *Defamation per quod—Essential Factual Elements (Private Figure—Matter of Public Concern)*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is a dispute as to whether the statement in question 1 is one of fact or opinion, an additional question or questions will be needed. See CACI No. 1707, *Fact Versus Opinion*.

Multiple statements may need to be set out separately in question 1, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements will need to be found as to each statement.

Question 4 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1705, *Defamation per quod—Essential Factual Elements (Private Figure—Matter of Private Concern)*, depending on which ground is applicable in the case.

If the affirmative defense of truth is at issue (see CACI No. 1720, *Affirmative Defense—Truth*), include question 4 from VF-1704, *Defamation per se—Affirmative Defense—Truth (Private Figure—Matter of Private Concern)*. Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Users may need to itemize all the damages listed in question 7 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Omit question 9 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-

3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1720. Slander of Title

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] [make a statement/[specify other act, e.g., record a deed] that cast doubts about [name of plaintiff]’s ownership of the property?**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. [Was the statement made to a person other than [name of plaintiff]/[Specify other publication, e.g., Did the deed become a public record]]?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of plaintiff] in fact own the property?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of defendant] [know that/act with reckless disregard of the truth or falsity as to whether] [name of plaintiff] owned the property?**

_____ **Yes** _____ **No**

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did [name of defendant] know or should [he/she/nonbinary pronoun] have recognized that someone else might act in reliance on the [statement/e.g., deed], causing [name of plaintiff] financial loss?**

_____ **Yes** _____ **No**

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

VF-1720

question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1721. Trade Libel

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make a statement that [*would be clearly or necessarily understood to have*] disparaged the quality of [*name of plaintiff*]'s [*product/service*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the statement made to a person other than [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the statement untrue?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [*know that the statement was untrue/act with reckless disregard of the truth or falsity of the statement*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] know or should [*he/she/nonbinary pronoun*] have recognized that someone else might act in reliance on the statement, causing [*name of plaintiff*] financial loss?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] suffer direct financial harm because someone else acted in reliance on the statement?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s harm?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]’s damages?

[a. Past economic loss \$_____]

[b. Future economic loss \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2015; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1731, *Trade Libel—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801,

814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1800, *Intrusion Into Private Affairs*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1801. Privacy—Public Disclosure of Private Facts

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] publicize private information concerning [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Would a reasonable person in [*name of plaintiff*]’s position consider the publicity highly offensive?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know or act with reckless disregard of the fact that a reasonable person in [*name of plaintiff*]’s position would consider the publicity highly offensive?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the private information of legitimate public concern [or did it have a substantial connection to a matter of legitimate public concern]?

_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]’s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]’s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]**[b. Future economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

*New September 2003; Revised April 2007, December 2010, December 2016, May 2024***Directions for Use**This verdict form is based on CACI No. 1801, *Public Disclosure of Private Facts*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual

VF-1801

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1802, *False Light*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the conduct does not involve a matter of public concern, then substitute the following for question number 3: “Was [name of defendant] negligent in determining the truth of the information or whether a false impression would be created by its publication?” If the conduct involved material that is not defamatory on its face, the following question should be added to this form: “Did [name of plaintiff] sustain harm to [his/her/nonbinary pronoun] property, business, profession, or occupation [including money spent as a result of the statements(s)]?”

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, November 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1803, *Appropriation of Name or Likeness*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1804. Privacy—Use of Name or Likeness (Civ. Code, § 3344)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] knowingly use [*name of plaintiff*]'s [*name/voice/signature/photograph/likeness*] on merchandise or to advertise or sell products or services?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] have [*name of plaintiff*]'s consent?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of defendant*]'s use of [*name of plaintiff*]'s [*name/voice/signature/photograph/likeness*] directly connected to [*name of defendant*]'s commercial purpose?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [5. Did [*name of plaintiff*] suffer any actual damages or is [*name of plaintiff*] reasonably likely to suffer any actual damages in the future?

_____ Yes _____ No

If your answer to question 5 is yes, then answer questions 6 and 7. If you answered no, answer question 7.]

6. What are [*name of plaintiff*]'s actual damages?

[a. Past economic loss

[lost earnings \$_____]
 [lost profits \$_____]
 [medical expenses \$_____]
 [other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]
 [lost profits \$_____]
 [medical expenses \$_____]
 [other future economic loss \$_____]

Total Future Economic Damages: \$_____]

**[c. Past noneconomic loss, including [humiliation/embarrassment/
 mental distress including any physical symptoms:] \$_____]**

**[d. Future noneconomic loss, including
 [humiliation/embarrassment/mental distress including any
 physical symptoms:] \$_____]**

TOTAL ACTUAL DAMAGES \$_____]

[7. Did [name of defendant] receive any profits from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness] that you did not include under [name of plaintiff]'s actual damages for lost profits in Question 6 above?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What amount of those profits did [name of defendant] receive from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness]?

TOTAL PROFITS RECEIVED BY DEFENDANT \$_____]

**Signed: _____
 Presiding Juror**

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, December 2010, June 2012, December 2012, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1804A, *Use of Name or Likeness*, and CACI No. 1821, *Damages for Use of Name or Likeness*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Under Civil Code section 3344(a), the plaintiff may recover actual damages or \$750, whichever is greater. The plaintiff may also recover any profits that the defendant received from the unauthorized use that were not taken into account in calculating actual damages. (*Orthopedic Systems Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 547 [135 Cal.Rptr.3d 200].) The advisory committee recommends calculating the defendant's profits to be disgorged separately from actual damages. Questions 5 through 8 take the jury through the recommended course. If no actual damages are sought, question 5 may be omitted and the jury instructed to enter \$750 as the total actual damages in question 6. If the jury awards actual damages of less than \$750, the court should raise the amount to \$750. If there is no claim to disgorge the defendant's wrongful profits, questions 7 and 8 may be omitted.

Additional questions may be necessary if the facts implicate Civil Code section 3344(d) (see Directions for Use under CACI No. 1804B, *Use of Name or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*).

If specificity is not required, users do not have to itemize all the actual damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1809, *Recording of Confidential Information*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 4 and 5 do not have to be read if the plaintiff is seeking the statutory penalty only.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801,

814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1900. Intentional Misrepresentation

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make a false representation of [a] fact[s] to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know that the representation was false, or did [*he/she/nonbinary pronoun*] make the representation recklessly and without regard for its truth?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] intend that [*name of plaintiff*] rely on the representation?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] reasonably rely on the representation?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of plaintiff*]'s reliance on [*name of defendant*]'s representation a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

- a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
	Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
	Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____]Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2009, December 2010, June 2014, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 1900, *Intentional Misrepresentation*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the defendant alleges that the representations referred to in question 1 were opinions only, additional questions may be required on this issue. See CACI No. 1904, *Opinions as Statements of Fact*.

VF-1900

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. However, if both intentional misrepresentation and negligent misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1903, *Negligent Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 2 above cannot be answered “yes” and question 3 of VF-1903 cannot also be answered “no.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made recklessly and without regard for the truth (see question 2 above) and one made without reasonable grounds for believing it is true (see CACI No. VF-1903, question 3). Question 2 of VF-1903 should be included to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2014, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1901, *Concealment*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Modify question 1 by referring to one of the other three grounds for concealment listed in element 1 of CACI No. 1901, *Concealment*, depending on which ground is applicable to the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*.

This verdict form may need to be augmented for the jury to make any factual

findings that are required in order to calculate the amount of prejudgment interest.

VF-1902. False Promise

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] make a promise to [name of plaintiff]?**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of defendant] intend to perform this promise when [he/she/nonbinary pronoun] made it?**

_____ **Yes** _____ **No**

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] intend that [name of plaintiff] rely on this promise?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of plaintiff] reasonably rely on this promise?**

_____ **Yes** _____ **No**

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did [name of defendant] perform the promised act?**

_____ **Yes** _____ **No**

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 6. Was [name of plaintiff]’s reliance on [name of defendant]’s promise a substantial factor in causing harm to [name of plaintiff]?**

_____ **Yes** _____ **No**

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2014, December 2015, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 1902, *False Promise*.

The special verdict forms in this section are intended only as models. They may

VF-1902

need to be modified depending on the facts of the case.

If multiple promises are at issue, question 1 should be repeated to specify each one; for example: “1. Did [*name of defendant*] promise [*name of plaintiff*] that [*specify promise*]?” (See *Ryan v. Crown Castle NG Networks, Inc.* (2016) 6 Cal.App.5th 775, 794 [211 Cal.Rptr.3d 743].) The rest of the questions will need to be repeated for each promise.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action (or from different promises), replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1903. Negligent Misrepresentation

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make a false representation of [a] fact[s] to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] honestly believe that the representation was true when [*he/she/nonbinary pronoun*] made it?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Did [*name of defendant*] have reasonable grounds for believing the representation was true when [*he/she/nonbinary pronoun*] made it?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] intend that [*name of plaintiff*] rely on the representation?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] reasonably rely on the representation?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff*]'s reliance on [*name of defendant*]'s representation a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
	Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
	Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]]

\$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:]]

\$ _____]

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Directions for Use

This verdict form is based on CACI No. 1903, *Negligent Misrepresentation*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the defendant alleges that the representations referred to in question 1 were opinions only, additional questions may be required on this issue. See CACI No. 1904, *Opinions as Statements of Fact*.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. However, if both negligent misrepresentation and intentional misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1900, *Intentional Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 3 above cannot be answered “no” and question 2 of VF-1900 cannot also be answered “yes.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made without reasonable grounds for believing it is true (see question 3 above) and one made recklessly and without regard for the truth (see CACI No. VF-1900, question 2). Include question 2 to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised February 2005, April 2007, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-2000

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 3 can be modified, as in element 3 in CACI No. 2000.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2001. Trespass—Affirmative Defense—Necessity

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [own/lease/occupy/control] the property?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] intentionally [enter/ [or] cause [another person/[*insert name of thing*]] to enter] [*name of plaintiff*]'s property?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] enter the property without [*name of plaintiff*]'s permission?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was it necessary, or did it reasonably appear to [*name of defendant*] to be necessary, to enter the land to prevent serious harm to a person or property?

_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s [entry/conduct] a substantial factor in causing [actual] harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	
[b. Future economic loss	
[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____	

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised February 2005, April 2007, October 2008, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*, and CACI No. 2005, *Affirmative Defense—Necessity*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 3 can be modified, as in element 3 in CACI No. 2000.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages,

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]**[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2001, *Trespass—Extrahazardous Activities*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-2002

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 4 can be modified.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	
[b. Future economic loss	
[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____	

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*. The amount of actual damages found by the jury is to be doubled. (See Civ. Code, § 3346(a).) The court can do the computation based on the jury’s award.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 3 can be modified, as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2004. Trespass to Timber—Willful and Malicious Conduct (Civ. Code, § 3346; Code Civ. Proc., § 733)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [own/lease/occupy/control] the property?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did [*name of defendant*] intentionally enter [*name of plaintiff*]'s property and [cut down or damage trees/take timber] located on the property?]

[or]

[Did [*name of defendant*], although not intending to do so, recklessly enter [*name of plaintiff*]'s property and damage trees located on the property?]

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] give permission to [cut down or damage the trees/take timber]?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] act willfully and maliciously?

_____ Yes _____ No

Answer question 6.

6. What are [name of plaintiff]'s damages?**[a. Past economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]**[b. Future economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

*New September 2003; Revised April 2007, December 2010, June 2013, December 2016, May 2024***Directions for Use**

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*, and CACI No. 2003, *Damage to Timber—Willful and Malicious Conduct*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of the

VF-2004

plaintiff's consent, question 3 can be modified as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2005. Public Nuisance

We answer the questions submitted to us as follows:

1. Did [*name of defendant*], by acting or failing to act, create a condition that was harmful to health?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the condition affect a substantial number of people at the same time?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would an ordinary person have been reasonably annoyed or disturbed by the condition?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did the seriousness of the harm outweigh the social utility of [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consent to [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] suffer harm that was different from the type of harm suffered by the general public?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s harm?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2007, December 2010, December 2016, May 2024

Directions for Use

This form is based on CACI No. 2020, *Public Nuisance—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Other factual situations may be substituted in question 1 as in element 1 of CACI No. 2020.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

Depending on the facts of the case, question 1 can be modified, as in element 1 of CACI No. 2020.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2006. Private Nuisance

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [own/lease/occupy/control] the property?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*], by acting or failing to act, create a condition or permit a condition to exist that was harmful to health?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did this condition substantially interfere with [*name of plaintiff*]'s use or enjoyment of [*his/her/nonbinary pronoun*] land?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would an ordinary person have reasonably been annoyed or disturbed by [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consent to [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did the seriousness of the harm outweigh the public benefit of [name of defendant]'s conduct?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ _____]

- [c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

- [d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2007, December 2010, December 2011, December 2016, May 2017, May 2024

Directions for Use

This form is based on CACI No. 2021, *Private Nuisance—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Depending on the facts of the case, question 2 may be replaced with one of the other options from element 2 of CACI No. 2021.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2100. Conversion

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [own/possess/have a right to possess] a [*insert description of personal property*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] substantially interfere with [*name of plaintiff*]'s property by knowingly or intentionally [[taking possession of/preventing [*name of plaintiff*] from having access to] the [*insert description of personal property*]]/[destroying the [*insert description of personal property*]]/refusing to return [*name of plaintiff*]'s [*insert description of personal property*] after [*name of plaintiff*] demanded its return]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] consent?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of plaintiff*] harmed?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

TOTAL \$ _____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2005; Revised December 2009, December 2010, June 2011, December 2016, May 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 2100, *Conversion—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the case involves multiple items of personal property as to which the evidence differs, users may need to modify question 2 to focus the jury on the different items.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2200, *Inducing Breach of Contract*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-

3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2201. Intentional Interference With Contractual Relations

We answer the questions submitted to us as follows:

1. Was there a contract between [*name of plaintiff*] and [*name of third party*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know of the contract?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*]'s conduct prevent performance or make performance more expensive or difficult?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [*intend to disrupt the performance of this contract/ [or] know that disruption of performance was certain or substantially certain to occur*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

VF-2201

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2202. Intentional Interference With Prospective Economic Relations

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of third party]* have an economic relationship that probably would have resulted in an economic benefit to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know of the relationship?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* engage in *[specify conduct determined by the court to be wrongful if proved]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. By engaging in this conduct, did *[name of defendant]* *[intend to disrupt the relationship/ [or] know that disruption of the relationship was certain or substantially certain to occur]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the relationship disrupted?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2203. Negligent Interference With Prospective Economic Relations

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of third party*] have an economic relationship that probably would have resulted in an economic benefit to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know or should [*he/she/nonbinary pronoun/it*] have known of the relationship?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know or should [*he/she/nonbinary pronoun/it*] have known that this relationship would be disrupted if [*he/she/nonbinary pronoun/it*] failed to act with reasonable care?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] fail to act with reasonable care?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] engage in wrongful conduct through [*insert grounds for wrongfulness*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2204, *Negligent Interference With Prospective Economic Relations*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2301. Breach of the Implied Obligation of Good Faith and Fair Dealing—Failure or Delay in Payment

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] suffer a loss covered under an insurance policy with [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] notified of the loss?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] [fail to pay/delay payment of] policy benefits?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s [failure to pay/delay in payment of] policy benefits, unreasonable or without proper cause?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s [failure to pay/delay in payment of] policy benefits a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

VF-2301

If punitive damages are claimed, combine this form with the appropriate verdict form numbering from VF-3900 to VF-3904.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2303. Bad Faith (First Party)—Breach of Duty to Inform
Insured of Rights**

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* suffer a loss covered under an insurance policy with *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* [deny coverage for/refuse to pay] *[name of plaintiff]*'s loss?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* have the [right/obligation] to *[describe right or obligation at issue; e.g., "to request arbitration within 180 days"]* under the policy?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* fail to reasonably inform *[name of plaintiff]* of [his/her/nonbinary pronoun] [right/obligation] to *[describe right or obligation]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s failure to reasonably inform *[name of plaintiff]* a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2304. Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] insured under a policy of liability insurance issued by [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of claimant*] make a claim against [*name of plaintiff*] that was covered by [*name of defendant*]’s insurance policy?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of claimant*] make a reasonable settlement demand to settle [*his/her/nonbinary pronoun*] claim against [*name of plaintiff*] for an amount within policy limits?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] fail to accept this settlement demand?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]’s failure to accept the settlement demand the result of unreasonable conduct by [*name of defendant*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. [Was a judgment entered against [*name of plaintiff*] for a sum of money greater than the policy limits?]

New May 2022; Revised May 2024

Directions for Use

This verdict form is based on CACI No. 2334, *Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 6 should be tailored to the facts of the case as presented in element 6 of CACI No. 2334.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2400. Breach of Employment Contract—Unspecified Term

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into an employment relationship?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] promise, by words or conduct, not to [discharge/demote] [*name of plaintiff*] except for good cause?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] substantially perform [his/her/nonbinary pronoun] job duties?

_____ Yes _____ No

If your answer to question 3 is yes, skip question 4 and answer question 5. If you answered no, answer question 4.

4. Was [*name of plaintiff*]'s performance excused or prevented?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] [discharge/demote] [*name of plaintiff*] without good cause?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff*] harmed by the [discharge/demotion]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss: _____ \$_____]

[b. Future economic loss: _____ \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. This verdict form is based on CACI No. 2401, *Breach of Employment Contract—Unspecified Term—Essential Factual Elements*.

Questions 3 and 4 should be deleted if substantial performance is not at issue.

The breakdown of damages is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

**VF-2401. Breach of Employment Contract—Unspecified
Term—Constructive Discharge**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into an employment relationship?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] promise, by words or conduct, not to [discharge/demote] [*name of plaintiff*] except for good cause?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] substantially perform [his/her/*nonbinary pronoun*] job duties?

_____ Yes _____ No

If your answer to question 3 is yes, skip question 4 and answer question 5. If you answered no, answer question 4.

4. Was [*name of plaintiff*]'s performance excused or prevented?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] intentionally create or knowingly permit working conditions to exist that were so intolerable that a reasonable person in [*name of plaintiff*]'s position would have had no reasonable alternative except to resign?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] resign because of the intolerable conditions?

VF-2402. Breach of Employment Contract—Specified Term

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into an employment contract that specified a length of time for which *[name of plaintiff]* would remain employed?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* substantially perform *[his/her/nonbinary pronoun]* job duties?

_____ Yes _____ No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was *[name of plaintiff]*'s performance excused or prevented?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* breach the employment contract by *[discharging/demoting]* *[name of plaintiff]* before the end of the term of the contract?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* harmed by the *[discharge/demotion]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss: \$ _____]

[b. Future economic loss: \$ _____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of each case.

This verdict form is based on CACI No. 2420, *Breach of Employment Contract—Specified Term—Essential Factual Elements*.

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

**VF-2403. Breach of Employment Contract—Specified
Term—Good-Cause Defense**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into an employment contract that specified a length of time for which [*name of plaintiff*] would remain employed?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] substantially perform [*his/her/nonbinary pronoun*] job duties?

_____ Yes _____ No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was [*name of plaintiff*]’s performance excused or prevented?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [*discharge/demote*] [*name of plaintiff*] before the end of the term of the contract?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] have good cause to [*discharge/demote*] [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff*] harmed by the [*discharge/demotion*]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss: \$_____]

[b. Future economic loss: \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of each case.

This verdict form is based on CACI No. 2420, *Breach of Employment Contract—Specified Term—Essential Factual Elements*, and CACI No. 2421, *Breach of Employment Contract—Specified Term—Good-Cause Defense*.

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-2404. Employment—Breach of the Implied Covenant of Good Faith and Fair Dealing

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into an employment relationship?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] substantially perform [*his/her/nonbinary pronoun*] job duties?

_____ Yes _____ No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was [*name of plaintiff*]’s performance excused or prevented?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [*specify conduct that plaintiff claims prevented plaintiff from receiving the benefits under the contract*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to act fairly and in good faith?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff*] harmed by [*name of defendant*]’s failure to act fairly and in good faith?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you

answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$_____]

[b. Future economic loss: \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Employment Contract—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 7 is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2405. Breach of the Implied Covenant of Good Faith and Fair Dealing—Affirmative Defense—Good Faith Mistaken Belief

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of defendant*] enter into an employment agreement?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] substantially perform [*his/her/nonbinary pronoun*] job duties?

_____ Yes _____ No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was [*name of plaintiff*]’s performance excused or prevented?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [*specify conduct that plaintiff claims prevented plaintiff from receiving the benefits under the contract*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]’s conduct based on an honest belief that [*insert alleged mistake*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. If true, would [*insert alleged mistake*] have been a legitimate and reasonable business purpose for the conduct?

_____ Yes _____ No

If your answer to question 6 is no, then answer question 7. If you

answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of defendant] fail to act fairly and in good faith?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of plaintiff] harmed by [name of defendant]’s failure to act in good faith?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$_____]

[b. Future economic loss: \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Employment Contract—Essential Factual Elements*, and CACI No. 2424, *Affirmative Defense—Breach of the Implied Covenant of Good Faith and Fair Dealing—Good Faith Though Mistaken Belief*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 9 is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2407. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] employed by [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] require [*name of plaintiff*] to [*specify alleged conduct in violation of public policy, e.g., “engage in price fixing”*] as a condition of employment?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was this requirement so intolerable that a reasonable person in [*name of plaintiff*]’s position would have had no reasonable alternative except to resign?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] resign because of this requirement?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the requirement a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]’s damages?

[a. Past economic loss

VF-2407

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2408. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] employed by [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] subjected to working conditions that violated public policy, in that [*describe conditions imposed on the employee that constitute the violation, e.g., “plaintiff was treated intolerably in retaliation for filing a workers’ compensation claim”*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] intentionally create or knowingly permit these working conditions?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Were these working conditions so intolerable that a reasonable person in [*name of plaintiff*]’s position would have had no reasonable alternative except to resign?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] resign because of these working conditions?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

2500. Disparate Treatment—Essential Factual Elements (Gov. Code, § 12940(a))

[Name of plaintiff] **claims that** *[name of defendant]* **wrongfully discriminated against** *[him/her/nonbinary pronoun]*. **To establish this claim, *[name of plaintiff]* must prove all of the following:**

- 1. That *[name of defendant]* was *[an employer/[other covered entity]]*;**
- 2. That *[name of plaintiff]* *[was an employee of [name of defendant]/ applied to [name of defendant] for a job/[describe other covered relationship to defendant]]*;**
- 3. *[That [name of defendant] [discharged/refused to hire/[other adverse employment action]] [name of plaintiff];]***

[or]

[That [name of defendant] subjected [name of plaintiff] to an adverse employment action;]

[or]

[That [name of plaintiff] was constructively discharged;]

- 4. That *[name of plaintiff]*'s *[protected status—for example, race, gender, or age]* was a **substantial motivating reason** for *[name of defendant]*'s **decision to *[discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct***;**
- 5. That *[name of plaintiff]* was harmed; and**
- 6. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.**

*New September 2003; Revised April 2009, June 2011, June 2012, June 2013, May 2020, May 2024**

Directions for Use

This instruction is intended for use when a plaintiff alleges disparate treatment discrimination under the FEHA against an employer or other covered entity. Disparate treatment occurs when an employer treats an individual less favorably than others because of the individual's protected status. In contrast, disparate impact (the other general theory of discrimination) occurs when an employer has an employment practice that appears neutral but has an adverse impact on members of a protected group. For disparate impact claims, see CACI No. 2502, *Disparate Impact—Essential Factual Elements*.

If the defendant's status as employer is in dispute, the court may need to instruct the

jury on the statutory definition of “employer” under the FEHA, which can include business entities acting as agents of employers. (Gov. Code, § 12926(d); *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(b)–(h), (j), (k).)

Read the first option for element 3 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” Explained, if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 3 and also give CACI No. 2510, “*Constructive Discharge*” Explained. Select “conduct” in element 4 if either the second or third option is included for element 3.

Note that there are two causation elements. There must be a causal link between the discriminatory animus and the adverse action (see element 4), and there must be a causal link between the adverse action and the damage (see element 6). (See *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713 [81 Cal.Rptr.3d 406].)

Element 4 requires that discrimination based on a protected classification be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, “*Substantial Motivating Reason*” Explained.) Modify element 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because the plaintiff was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

For damages instructions, see applicable instructions on tort damages.

Sources and Authority

- Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Perception and Association. Government Code section 12926(o).
- “Race.” Government Code section 12926(w).
- “Protective Hairstyles.” Government Code section 12926(x).
- “Reproductive Health Decisionmaking.” Government Code section 12926(y).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our

conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA’s definition of employer; we express no view of the scope of a business entity agent’s possible liability under the FEHA’s aider and abettor provision.” (*Raines, supra*, 15 Cal.5th at p. 291, internal citations omitted.)

- “[C]onceptually the theory of ‘[disparate] treatment’ . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex or national origin.” (*Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1317 [237 Cal.Rptr. 884], quoting *Teamsters v. United States* (1977) 431 U.S. 324, 335–336, fn. 15 [97 S.Ct. 1843, 52 L.Ed.2d 396].)
- “California has adopted the three-stage burden-shifting test for discrimination claims set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed. 2d 668]. ‘This so-called *McDonnell Douglas* test reflects the principle that direct evidence of intentional discrimination is rare, and that such claims must usually be proved circumstantially. Thus, by successive steps of increasingly narrow focus, the test allows discrimination to be inferred from facts that create a reasonable likelihood of bias and are not satisfactorily explained.’ ” (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307 [115 Cal.Rptr.3d 453], internal citations omitted.)
- “The *McDonnell Douglas* framework was designed as ‘an analytical tool for use by the trial judge in applying the law, not a concept to be understood and applied by the jury in the factfinding process.’ ” (*Abed v. Western Dental Services, Inc.* (2018) 23 Cal.App.5th 726, 737 [233 Cal.Rptr.3d 242].)
- “At trial, the *McDonnell Douglas* test places on the plaintiff the initial burden to establish a prima facie case of discrimination. This step is designed to eliminate at the outset the most patently meritless claims, as where the plaintiff is not a member of the protected class or was clearly unqualified, or where the job he sought was withdrawn and never filled. While the plaintiff’s prima facie burden is ‘not onerous’, he must at least show ‘“actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were ‘based on a [prohibited] discriminatory criterion . . .’ . . .” . . .’ ” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354–355 [100 Cal.Rptr.2d 352, 8 P.3d 1089], internal citations omitted.)
- “If, at trial, the plaintiff establishes a prima facie case, a presumption of discrimination arises. This presumption, though ‘rebuttable,’ is ‘legally mandatory.’ Thus, in a trial, ‘[i]f the trier of fact believes the plaintiff’s evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.’ [¶] Accordingly, at this trial stage, the burden shifts to the employer to rebut the presumption by producing admissible evidence, sufficient to ‘raise[] a genuine issue of fact’ and to ‘justify a judgment for the [employer],’ that its action was taken for a legitimate, nondiscriminatory reason. [¶] If the employer sustains this burden, the presumption of discrimination disappears. The plaintiff must then

have the opportunity to attack the employer’s proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive. In an appropriate case, evidence of dishonest reasons, considered together with the elements of the prima facie case, may permit a finding of prohibited bias. The ultimate burden of persuasion on the issue of actual discrimination remains with the plaintiff.” (*Guz, supra*, 24 Cal.4th at pp. 355–356, internal citations omitted.)

- “The trial court decides the first two stages of the *McDonnell Douglas* test as questions of law. If the plaintiff and defendant satisfy their respective burdens, the presumption of discrimination disappears and the question whether the defendant unlawfully discriminated against the plaintiff is submitted to the jury to decide whether it believes the defendant’s or the plaintiff’s explanation.” (*Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 965 [181 Cal.Rptr.3d 553].)
- “We conclude that where a plaintiff establishes a prima facie case of discrimination based on a failure to interview her for open positions, the employer must do more than produce evidence that the hiring authorities did not know why she was not interviewed. Nor is it enough for the employer, in a writ petition or on appeal, to cobble together after-the-fact *possible* nondiscriminatory reasons. While the stage-two burden of production is not onerous, the employer must clearly state the *actual* nondiscriminatory reason for the challenged conduct.” (*Dept. of Corrections & Rehabilitation v. State Personnel Bd.* (2022) 74 Cal.App.5th 908, 930 [290 Cal.Rptr.3d 70], original italics.)
- “To succeed on a disparate treatment claim at trial, the plaintiff has the initial burden of establishing a prima facie case of discrimination, to wit, a set of circumstances that, if unexplained, permit an inference that it is more likely than not the employer intentionally treated the employee less favorably than others on prohibited grounds. Based on the inherent difficulties of showing intentional discrimination, courts have generally adopted a multifactor test to determine if a plaintiff was subject to disparate treatment. The plaintiff must generally show that: he or she was a member of a protected class; was qualified for the position he sought; suffered an adverse employment action, and there were circumstances suggesting that the employer acted with a discriminatory motive. [¶] On a defense motion for summary judgment against a disparate treatment claim, the defendant must show either that one of these elements cannot be established or that there were one or more legitimate, nondiscriminatory reasons underlying the adverse employment action.” (*Jones v. Department of Corrections* (2007) 152 Cal.App.4th 1367, 1379 [62 Cal.Rptr.3d 200], internal citations omitted.)
- “Although ‘[t]he specific elements of a prima facie case may vary depending on the particular facts,’ the plaintiff in a failure-to-hire case ‘[g]enerally . . . must provide evidence that (1) he [or she] was a member of a protected class, (2) he [or she] was qualified for the position he [or she] sought . . . , (3) he [or she] suffered an adverse employment action, such as . . . denial of an available job, and (4) some other circumstance suggests discriminatory motive,’ such as that the position remained open and the employer continued to solicit applications for

it.” (*Abed, supra*, 23 Cal.App.5th at p. 736.)

- “Although we recognize that in most cases, a plaintiff who did not apply for a position will be unable to prove a claim of discriminatory failure to hire, a job application is not an *element* of the claim.” (*Abed, supra*, 23 Cal.App.5th at p. 740, original italics.)
- “Employers who lie about the existence of open positions are not immune from liability under the FEHA simply because they are effective in keeping protected persons from applying.” (*Abed, supra*, 23 Cal.App.5th at p. 741.)
- “[Defendant] still could shift the burden to [plaintiff] by presenting admissible evidence showing a legitimate, nondiscriminatory reason for terminating her. ‘It is the employer’s honest belief in the stated reasons for firing an employee and not the objective truth or falsity of the underlying facts that is at issue in a discrimination case.’ . . . ‘[I]f nondiscriminatory, [the employer’s] true reasons need not necessarily have been wise or correct. . . . While the objective soundness of an employer’s proffered reasons supports their credibility . . . , the ultimate issue is simply whether the employer acted with *a motive to discriminate illegally*. Thus, “legitimate” reasons . . . in this context are reasons that are *facially unrelated to prohibited bias*, and which, if true, would thus preclude a finding of *discrimination*. . . .’” (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 170–171 [125 Cal.Rptr.3d 1], original italics, internal citations omitted.)
- “[W]e hold that a residency program’s claim that it terminated a resident for academic reasons is not entitled to deference. . . . [T]he jury should be instructed to evaluate, without deference, whether the program terminated the resident for a genuine academic reason or because of an impermissible reason such as retaliation or the resident’s gender.” (*Khoiny v. Dignity Health* (2022) 76 Cal.App.5th 390, 404 [291 Cal.Rptr.3d 496].)
- “The burden therefore shifted to [plaintiff] to present evidence showing the [defendant] engaged in intentional discrimination. To meet her burden, [plaintiff] had to present evidence showing (1) the [defendant]’s stated reason for not renewing her contract was untrue or pretextual; (2) the [defendant] acted with a discriminatory animus in not renewing her contract; or (3) a combination of the two.” (*Swanson, supra*, 232 Cal.App.4th at p. 966.)
- “Evidence that an employer’s proffered reasons were pretextual does not necessarily establish that the employer intentionally discriminated: ‘ “[I]t is not enough . . . to disbelieve the employer; the factfinder must believe the plaintiff’s explanation of intentional discrimination.’ ” However, evidence of pretext is important: ‘ “[A] plaintiff’s prima facie case, combined with sufficient evidence to find that the employer’s asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.” ’ ” (*Diego v. City of Los Angeles* (2017) 15 Cal.App.5th 338, 350–351 [223 Cal.Rptr.3d 173], internal citations omitted.)
- “While a complainant need not prove that [discriminatory] animus was the sole

motivation behind a challenged action, he must prove by a preponderance of the evidence that there was a ‘causal connection’ between the employee’s protected status and the adverse employment decision.” (*Mixon, supra*, 192 Cal.App.3d at p. 1319.)

- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, . . . proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris, supra*, 56 Cal.4th at p. 232, original italics.)
- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a “but for” cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “In cases involving a comparison of the plaintiff’s qualifications and those of the successful candidate, we must assume that a reasonable juror who might disagree with the employer’s decision, but would find the question close, would not usually infer discrimination on the basis of a comparison of qualifications alone. In a close case, a reasonable juror would usually assume that the employer is more capable of assessing the significance of small differences in the qualifications of the candidates, or that the employer simply made a judgment call. [Citation.] But this does not mean that a reasonable juror would in every case defer to the employer’s assessment. If that were so, no job discrimination case could ever go to trial. If a factfinder can conclude that a reasonable employer would have found the plaintiff to be *significantly better* qualified for the job, but this employer did not, the factfinder can legitimately infer that the employer consciously selected a less-qualified candidate—something that employers do not usually do, unless some other strong consideration, such as discrimination, enters into the picture.” (*Reeves v. MV Transportation, Inc.* (2010) 186 Cal.App.4th 666, 674–675 [111 Cal.Rptr.3d 896], original italics.)
- “While not all cases hold that ‘the disparity in candidates’ qualifications “must be so apparent as to jump off the page and slap us in the face to support a finding of pretext”’ the precedents do consistently require that the disparity be substantial to support an inference of discrimination.” (*Reeves, supra*, 186 Cal.App.4th at p. 675, internal citation omitted.)
- “In no way did the Court of Appeal in *Reeves* overturn the long-standing rule that comparator evidence is relevant and admissible where the plaintiff and the comparator are similarly situated in all relevant respects and the comparator is treated more favorably. Rather, it held that in a job hiring case, and in the context of a summary judgment motion, a plaintiff’s weak comparator evidence

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‘alone’ is insufficient to show pretext.” (*Gupta v. Trustees of California State University* (2019) 40 Cal.App.5th 510, 521 [253 Cal.Rptr.3d 277].)

- “[Defendant] contends that a trial court must assess the relative strength and nature of the evidence presented on summary judgment in determining if the plaintiff has ‘created only a weak issue of fact.’ However, [defendant] overlooks that a review of all of the evidence is essential to that assessment. The stray remarks doctrine, as advocated by [defendant], goes further. It allows a court to weigh and assess the remarks in isolation, and to disregard the potentially damaging nature of discriminatory remarks simply because they are made by ‘nondecisionmakers, or [made] by decisionmakers unrelated to the decisional process.’ [Defendant] also argues that ambiguous remarks are stray, irrelevant, prejudicial, and inadmissible. However, ‘the task of disambiguating ambiguous utterances is for trial, not for summary judgment.’ Determining the weight of discriminatory or ambiguous remarks is a role reserved for the jury. The stray remarks doctrine allows the trial court to remove this role from the jury.” (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 540–541 [113 Cal.Rptr.3d 327, 235 P.3d 988], internal citations omitted; see Gov. Code, § 12923(c) [Legislature affirms the decision in *Reid v. Google, Inc.* in its rejection of the “stray remarks doctrine”].)
- “[D]iscriminatory remarks can be relevant in determining whether intentional discrimination occurred: ‘Although stray remarks may not have strong probative value when viewed in isolation, they may corroborate direct evidence of discrimination or gain significance in conjunction with other circumstantial evidence. Certainly, who made the comments, when they were made in relation to the adverse employment decision, and in what context they were made are all factors that should be considered’” (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1190–1191 [220 Cal.Rptr.3d 42].)
- “Discrimination on the basis of an employee’s foreign accent is a sufficient basis for finding national origin discrimination.” (*Galvan v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 549, 562 [250 Cal.Rptr.3d 16].)
- “Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes.” (*Guz, supra*, 24 Cal.4th at p. 354.)
- “We have held ‘that, in a civil action under the FEHA, all relief generally available in noncontractual actions . . . may be obtained.’ This includes injunctive relief.” (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [87 Cal.Rptr.2d 132, 980 P.2d 846], internal citations omitted.)
- “The FEHA does not itself authorize punitive damages. It is, however, settled that California’s punitive damages statute, Civil Code section 3294, applies to actions brought under the FEHA” (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1147–1148 [74 Cal.Rptr.2d 510], internal citations omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1025, 318

1029

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:194, 7:200–7:201, 7:356, 7:391–7:392 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.44–2.82

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23[2] (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 2:2, 2:20 (Thomson Reuters)

2501. Affirmative Defense—Bona fide Occupational Qualification

[*Name of defendant*] **claims that [his/her/nonbinary pronoun/its] decision [to discharge/[other adverse employment action]] [*name of plaintiff*] was lawful because [he/she/nonbinary pronoun/it] was entitled to consider [*protected status—for example, race, gender, or age*] as a job requirement. To succeed, [*name of defendant*] must prove all of the following:**

- 1. That the job requirement was reasonably necessary for the operation of [*name of defendant*]'s business;**
- 2. That [*name of defendant*] had a reasonable basis for believing that substantially all [*members of protected group*] are unable to safely and efficiently perform that job;**
- 3. That it was impossible or highly impractical to consider whether each [*applicant/employee*] was able to safely and efficiently perform the job; and**
- 4. That it was impossible or highly impractical for [*name of defendant*] to rearrange job responsibilities to avoid using [*protected status*] as a job requirement.**

*New September 2003; Revised May 2024**

Directions for Use

An employer may assert the bona fide occupational qualification (BFOQ) defense where the employer has a practice that on its face excludes an entire group of individuals because of their protected status. Modifications will be necessary if the BFOQ defense is raised in a case involving allegations of failure to accommodate an employee who is pregnant, recovering from childbirth, or having related medical conditions. (Gov. Code, § 12945(a).)

Sources and Authority

- Bona fide Occupational Qualification. Government Code section 12940(a)(1).
- Bona fide Occupational Qualification for Pregnancy, Childbirth and Related Conditions. Government Code section 12945(a).
- Bona fide Occupational Qualification. Cal. Code Regs., tit. 2, § 11010(a).
- Bona fide Occupational Qualification Under Federal Law. 42 U.S.C. § 2000e-2(e)(1).
- The BFOQ defense is a narrow exception to the general prohibition on discrimination. (*Bohemian Club v. Fair Employment & Housing Com.* (1986) 187 Cal.App.3d 1, 19 [231 Cal.Rptr. 769]; *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW v.*

Johnson Controls, Inc. (1991) 499 U.S. 187, 201 [111 S.Ct. 1196, 113 L.Ed.2d 158].)

- “‘[I]n order to rely on the bona fide occupational qualification exception an employer has the burden of proving that he had reasonable cause to believe, that is, a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.’” (*Bohemian Club, supra*, 187 Cal.App.3d at p. 19, quoting *Weeks v. Southern Bell Telephone & Telegraph Co.* (5th Cir. 1969) 408 F.2d 228, 235.)
- “‘First, the employer must demonstrate that the occupational qualification is ‘reasonably necessary to the normal operation of [the] particular business.’ Secondly, the employer must show that the categorical exclusion based on [the] protected class characteristic is justified, i.e., that ‘all or substantially all’ of the persons with the subject class characteristic fail to satisfy the occupational qualification.” (*Johnson Controls, Inc. v. Fair Employment & Housing Com.* (1990) 218 Cal.App.3d 517, 540 [267 Cal.Rptr. 158], quoting *Weeks, supra*, 408 F.2d at p. 235.)
- “‘Even if an employer can demonstrate that certain jobs require members of one sex, the employer must also ‘bear the burden of proving that because of the nature of the operation of the business they could not rearrange job responsibilities . . .’ in order to reduce the BFOQ necessity.” (*Johnson Controls, Inc., supra*, 218 Cal.App.3d at p. 541; see *Hardin v. Stynchcomb* (11th Cir. 1982) 691 F.2d 1364, 1370–1371.)
- “‘Alternatively, the employer could establish that age was a legitimate proxy for the safety-related job qualifications by proving that it is ‘impossible or highly impractical’ to deal with the older employees on an individualized basis.” (*Western Airlines, Inc. v. Criswell* (1985) 472 U.S. 400, 414–415 [105 S.Ct. 2743, 86 L.Ed.2d 321], internal citation and footnote omitted.)
- “‘The Fair Employment and Housing Commission has interpreted the BFOQ defense in a manner incorporating all of the federal requirements necessary for its establishment. . . . [¶] The standards of the Commission are . . . in harmony with federal law regarding the availability of a BFOQ defense.’” (*Bohemian Club, supra*, 187 Cal.App.3d at p. 19.)
- “‘By modifying ‘qualification’ with ‘occupational,’ Congress narrowed the term to qualifications that affect an employee’s ability to do the job.” (*International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, supra*, 499 U.S. at p. 201.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1025, 1034

Chin et al., California Practice Guide: Employment Litigation, Ch.9-C, *California Fair Employment and Housing Act (FEHA)*, ¶¶ 9:2380, 9:2382, 9:2400, 9:2430 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Sexual

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Harassment, §§ 2.91–2.94

2 Wilcox, California Employment Law, Ch. 41, *Civil Actions Under Equal Employment Opportunity Laws*, §§ 41.94[3], 41.108 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.54[4] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:84 (Thomson Reuters)

2502. Disparate Impact—Essential Factual Elements (Gov. Code, § 12940(a))

[Name of plaintiff] claims that [name of defendant] had [an employment practice/a selection policy] that wrongfully discriminated against [him/her/nonbinary pronoun]. To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of defendant] was [an employer/[other covered entity]];**
- 2. That [name of plaintiff] [was an employee of [name of defendant]/ applied to [name of defendant] for a job/[other covered relationship to defendant]];**
- 3. That [name of defendant] had [an employment practice of [describe practice]/a selection policy of [describe policy]] that had a disproportionate adverse effect on [describe protected group—for example, persons over the age of 40];**
- 4. That [name of plaintiff] is [protected status];**
- 5. That [name of plaintiff] was harmed; and**
- 6. That [name of defendant]’s [employment practice/selection policy] was a substantial factor in causing [name of plaintiff]’s harm.**

*New September 2003; Revised June 2011, May 2024**

Directions for Use

This instruction is intended for disparate impact employment discrimination claims. Disparate impact occurs when an employer has an employment practice that appears neutral but has an adverse impact on members of a protected group and cannot be justified by business necessity. (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1405 [194 Cal.Rptr.3d 689].)

If the defendant’s status as employer is in dispute, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA, which can include business entities acting as agents of employers. (Gov. Code, § 12926(d); *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(b)–(h), (j), (k).)

The court should consider instructing the jury on the meaning of “adverse impact,” tailored to the facts of the case and the applicable law.

Sources and Authority

- Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Disparate Impact May Prove Age Discrimination. Government Code section 12941.1.
- Justification for Disparate Impact. Cal. Code Regs., tit. 2, §§ 11010(b), 11017(a), (e).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA’s definition of employer; we express no view of the scope of a business entity agent’s possible liability under the FEHA’s aider and abettor provision.” (*Raines, supra*, 15 Cal.5th at p. 291, internal citations omitted.)
- “Prohibited discrimination may . . . be found on a theory of disparate impact, i.e., that regardless of motive, a *facially neutral* employer practice or policy, bearing no manifest relationship to job requirements, *in fact* had a disproportionate adverse effect on members of the protected class.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354, fn. 20 [100 Cal.Rptr.2d 352, 8 P.3d 1089], internal citations omitted.)
- “A ‘disparate impact’ plaintiff . . . may prevail without proving intentional discrimination . . . [However,] a disparate impact plaintiff ‘must not merely prove circumstances raising an inference of discriminatory impact; he must prove the discriminatory impact at issue.’ ” (*Ibarbia v. Regents of the University of California* (1987) 191 Cal.App.3d 1318, 1329–1330 [237 Cal.Rptr. 92], quoting *Lowe v. City of Monrovia* (9th Cir. 1985) 775 F.2d 998, 1004.)
- “‘To establish a prima facie case of discrimination, a plaintiff must show that the facially neutral employment practice had a significantly discriminatory impact. If that showing is made, the employer must then demonstrate that “any given requirement [has] a manifest relationship to the employment in question,” in order to avoid a finding of discrimination . . . Even in such a case, however, the plaintiff may prevail, if he shows that the employer was using the practice as a mere pretext for discrimination.’ ” (*City and County of San Francisco v. Fair Employment and Housing Com.* (1987) 191 Cal.App.3d 976, 985 [236 Cal.Rptr. 716], quoting *Connecticut v. Teal* (1982) 457 U.S. 440, 446–447 [102 S.Ct. 2525, 73 L.Ed.2d 130], internal citation omitted.)
- “It is well settled that valid statistical evidence is required to prove disparate

impact discrimination, that is, that a facially neutral policy has caused a protected group to suffer adverse effects. ‘ “Once the employment practice at issue has been identified, causation must be proved; that is, the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group. . . . [S]tatistical disparities must be sufficiently substantial that they raise such an inference of causation.” ’ ’ ’ (*Jumaane, supra*, 241 Cal.App.4th at p. 1405.)

- Under federal title VII, a plaintiff may establish an unlawful employment practice based on disparate impact in one of two ways: (1) the plaintiff demonstrates that a defendant uses a particular employment practice that causes a disparate impact on the basis of a protected status, and the defendant “fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity”; or (2) the plaintiff demonstrates that there is an alternative employment practice with less adverse impact, and the defendant “refuses to adopt such alternative employment practice.” (42 U.S.C. § 2000e-2(k)(1)(A).)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 4-A, *Employment Presumed At Will*, ¶ 4:25 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:530, 7:531, 7:535 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, § 2.65

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.21 (Matthew Bender)

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23[4] (Matthew Bender)

California Civil Practice: Employment Litigation, § 2:23 (Thomson Reuters)

2513. Business Judgment for “At-Will” Employment

In California, employment is presumed to be “at will.” This means that an employer may [discharge/[*other adverse action*]] an employee for no reason, or for a good, bad, mistaken, unwise, or even unfair reason, as long as its action is not for a [discriminatory/retaliatory] reason.

New December 2013; Revised May 2024

Directions for Use

Give this instruction to advise the jury that the employer’s adverse action is not illegal just because it is ill-advised. It has been held to be error not to give this instruction. (See *Veronese v. Lucasfilm Ltd.* (2012) 212 Cal.App.4th 1, 20–24 [151 Cal.Rptr.3d 41].)

Sources and Authority

- At-Will Employment. Labor Code section 2922.
- “[A] plaintiff in a discrimination case must show discrimination, not just that the employer’s decision was wrong, mistaken, or unwise. . . . ‘The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. . . . ‘While an employer’s judgment or course of action may seem poor or erroneous to outsiders, the relevant question is . . . whether the given reason was a pretext for illegal discrimination. The employer’s stated legitimate reason . . . does not have to be a reason that the judge or jurors would act on or approve.’ ” ’ ” (*Veronese, supra*, 212 Cal.App.4th at p. 21, internal citation omitted.)
- “[I]f nondiscriminatory, [defendant]’s true reasons need not necessarily have been wise or correct. While the objective soundness of an employer’s proffered reasons supports their credibility . . . , the ultimate issue is simply whether the employer acted with *a motive to discriminate illegally*. Thus, ‘legitimate’ reasons in this context are reasons that are *facially unrelated to prohibited bias*, and which, if true, would thus preclude a finding of *discrimination*.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 358 [100 Cal.Rptr.2d 352, 8 P.3d 1089], original italics, internal citations omitted.)
- “[U]nder the law [defendant] was entitled to exercise her business judgment, without second guessing. But [the court] refused to tell the jury that. That was error.” (*Veronese, supra*, 212 Cal.App.4th at p. 24.)
- “An employment decision based on political concerns, even if otherwise unfair, is not actionable under section 12940 so long as the employee’s race or other protected status is not a substantial factor in the decision.” (*Diego v. City of Los Angeles* (2017) 15 Cal.App.5th 338, 355 [223 Cal.Rptr.3d 173].)

- “What constitutes satisfactory performance is of course a question ordinarily vested in the employer’s sole discretion. An employer is free to set standards that might appear unreasonable to outside observers, and to discipline employees who fail to meet those standards, so long as the standards are applied evenhandedly. But that does not mean that an employer conclusively establishes the governing standard of competence in an employment discrimination action merely by asserting that the plaintiff’s performance was less than satisfactory. Evidence of the employer’s policies and practices, including its treatment of other employees, may support a contention, and an eventual finding, that the plaintiff’s job performance did in fact satisfy the employer’s own norms.” (*Cheal v. El Camino Hospital* (2014) 223 Cal.App.4th 736, 742–743 [167 Cal.Rptr.3d 485].)
- “The central issue is and should remain whether the evidence as a whole supports a reasoned inference that the challenged action was the product of discriminatory or retaliatory animus. The employer’s mere articulation of a legitimate reason for the action cannot answer this question; it can only dispel the presumption of improper motive that would otherwise entitle the employee to a judgment in his favor.” (*Cheal, supra*, 223 Cal.App.4th at p. 755.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 244 et seq.

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1017–1021

Chin et al., California Practice Guide: Employment Litigation, Ch. 4-A, *Employment Presumed At Will*, ¶ 4:25 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:194, 7:200–7:201, 7:356, 7:391–7:392, 7:530, 7:531, 7:535 (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.01 et seq. (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, § 249.11 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, § 100.23 (Matthew Bender)

2521A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

[Name of plaintiff] claims that [he/she/nonbinary pronoun] was subjected to harassment based on [his/her/nonbinary pronoun] [describe protected status, e.g., race, gender, or age] at [name of defendant] and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, or abusive.

To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of plaintiff] was [an employee of/an applicant for a position with/a person providing services under a contract with/ an unpaid intern with/a volunteer with] [name of defendant];**
- 2. That [name of plaintiff] was subjected to harassing conduct because [he/she/nonbinary pronoun] was [protected status, e.g., a woman];**
- 3. That the harassing conduct was severe or pervasive;**
- 4. That a reasonable [e.g., woman] in [name of plaintiff]’s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**
- 5. That [name of plaintiff] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**
- 6. [Select applicable basis of defendant’s liability:]**
[That a supervisor engaged in the conduct;]
[or]
[That [name of defendant] [or [his/her/nonbinary pronoun/its] supervisors or agents] knew or should have known of the conduct and failed to take immediate and appropriate corrective action;]
- 7. That [name of plaintiff] was harmed; and**
- 8. That the conduct was a substantial factor in causing [name of plaintiff]’s harm.**

Derived from former CACI No. 2521 December 2007; Revised June 2013, December 2015, May 2018, July 2019, May 2020, November 2021, November 2023, May 2024**

Directions for Use

This instruction is for use in a hostile work environment case when the defendant is

an employer or other entity covered by the FEHA. If the defendant is a labor organization, employment agency, apprenticeship training program or any training program leading to employment (rather than an employer), the instruction should be modified as appropriate. (See Gov. Code, § 12940(j)(1).) Further modification may be necessary if the defendant is a business-entity agent of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See *ibid.*) If the alleged harassment did not occur in the workplace, the instruction should be modified as appropriate. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1051 [58 Cal.Rptr.2d 122] [“[A]s long as the harassment occurs in a work-related context, the employer is liable”].)

For an individual defendant, such as the alleged harasser or plaintiff’s coworker, see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*. For a case in which the plaintiff is not the target of the harassment, see CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*. For an instruction for use if the hostile environment is due to sexual favoritism, see CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*. Also read CACI No. 2523, “*Harassing Conduct*” Explained, and CACI No. 2524, “*Severe or Pervasive*” Explained.

Modify element 2 if plaintiff was not actually a member of the protected class, but alleges harassment because the plaintiff was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

In element 6, select the applicable basis of employer liability: (a) strict liability for a supervisor’s harassing conduct, or (b) the employer’s ratification of the conduct. For a definition of “supervisor,” see CACI No. 2525, *Harassment—“Supervisor” Defined*. If there are both employer and individual supervisor defendants (see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer’s strict liability for supervisor harassment. (*State Dept. of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].) Employers may be liable for the conduct of certain agents. (See Gov. Code, §§ 12925(d), 12926(d), and 12940(j)(1) and *Reno v. Baird* (1998) 18 Cal.4th 640, 658 [76 Cal.Rptr.2d 499, 957 P.2d 1333] [California Supreme Court declined to

express opinion whether “agent” language in the FEHA merely incorporates respondeat superior principles or has some other meaning].)

Sources and Authority

- Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- “Employer” Defined for Harassment. Government Code section 12940(j)(4)(A).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).
- Person Providing Services Under Contract. Government Code section 12940(j)(5).
- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).
- Perception and Association. Government Code section 12926(o).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA’s definition of employer; we express no view of the scope of a business entity agent’s possible liability under the FEHA’s aider and abettor provision.” (*Raines, supra*, 15 Cal. 5th at p. 291, internal citations omitted.)
- “To establish a prima facie case of a hostile work environment, [the plaintiff] must show that (1) [plaintiff] is a member of a protected class; (2) [plaintiff] was subjected to unwelcome harassment; (3) the harassment was based on [plaintiff’s] protected status; (4) the harassment unreasonably interfered with [plaintiff’s] work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment.” (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581 [250 Cal.Rptr.3d 1].)
- “[T]he adjudicator’s inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff’s work performance. To show such interference, ‘the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.’ It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to ‘make it more difficult to do the job.’” (*Harris v. Forklift Sys.* (1993) 510 U.S.

17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J.; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)

- “[A]n employer is strictly liable for all acts of sexual harassment by a supervisor.” (*State Dept. of Health Servs.*, *supra*, 31 Cal.4th at p. 1042.)
- “The applicable language of the FEHA does not suggest that an employer’s liability for sexual harassment by a supervisor is constrained by principles of agency law. Had the Legislature so intended, it would have used language in the FEHA imposing the negligence standard of liability on acts of harassment by an employee ‘other than an agent,’ ‘not acting as the employer’s agent,’ or ‘not acting within the scope of an agency for the employer.’ By providing instead in section 12940, subdivision (j)(1), that the negligence standard applies to acts of harassment ‘by an employee other than an agent *or supervisor*’ (italics added), the Legislature has indicated that *all* acts of harassment by a supervisor are to be exempted from the negligence standard, whether or not the supervisor was then acting as the employer’s agent, and that agency principles come into play only when the harasser is *not* a supervisor. (*State Dept. of Health Services*, *supra*, 31 Cal.4th at p. 1041, original italics.)
- “When the harasser is a nonsupervisory employee, employer liability turns on a showing of negligence (that is, the employer knew or should have known of the harassment and failed to take appropriate corrective action).” (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 952 [139 Cal.Rptr.3d 464].)
- “If an employee other than an agent or supervisor commits the harassment, and the employer takes immediate and appropriate corrective action when it becomes or reasonably should become aware of the conduct—for example, when the victim or someone else informs the employer—there simply is no ‘unlawful employment practice’ that the FEHA governs.” (*Carrisales v. Dept. of Corrections* (1999) 21 Cal.4th 1132, 1136 [90 Cal.Rptr.2d 804, 988 P.2d 1083], called into doubt on other grounds by statute.)
- “Under FEHA, an employer is strictly liable for harassment by a supervisor. However, an employer is only strictly liable under FEHA for harassment by a supervisor ‘if the supervisor is acting in the capacity of supervisor when the harassment occurs.’ ‘The employer is *not* strictly liable for a supervisor’s acts of harassment resulting from a completely private relationship unconnected with the employment and not occurring at the workplace or during normal working hours.’ ” (*Atalla v. Rite Aid Corp.* (2023) 89 Cal.App.5th 294, 309 [306 Cal.Rptr.3d 1], internal citations omitted, original italics.)
- “Here, [defendant] was jointly liable with its employees on a respondeat superior or vicarious liability theory on every cause of action in which it was named as a defendant.” (*Bihun*, *supra*, 13 Cal.App.4th at p. 1000.)
- “The *McDonnell Douglas* burden-shifting framework does not apply to [plaintiff]’s harassment claim either. Since ‘there is no possible justification for harassment in the workplace,’ an employer cannot offer a legitimate nondiscriminatory reason for it.” (*Cornell v. Berkeley Tennis Club* (2017) 18

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Cal.App.5th 908, 927 [227 Cal.Rptr.3d 286].)

- “[A]lthough no California cases have directly addressed racial harassment in the workplace, the California courts have applied the federal threshold standard to claims of sexual harassment and held that FEHA is violated when the harassment was ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment.’ ” (*Etter v. Veriflo Corp.* (1998) 67 Cal.App.4th 457, 464–465 [79 Cal.Rptr.2d 33], internal citations and footnote omitted.)
- “When the workplace is permeated with discriminatory intimidation, ridicule and insult that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment,’ the law is violated.” (*Kelly-Zurian v. Wohl Shoe Co., Inc.* (1994) 22 Cal.App.4th 397, 409 [27 Cal.Rptr.2d 457], internal citation omitted.)
- “[N]ot every utterance of a racial slur in the workplace violates the FEHA or Title VII. As the United States Supreme Court has recognized in the context of sexual harassment: ‘[N]ot all workplace conduct that may be described as “harassment” affects a “term, condition, or privilege” of employment within the meaning of Title VII. For sexual harassment to be actionable, it must be sufficiently severe or pervasive “to alter the conditions of [the victim’s] employment and create an abusive working environment.”’ . . . ‘Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII’s purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim’s employment, and there is no Title VII violation.’ . . . California courts have adopted the same standard in evaluating claims under the FEHA.” (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 129–130 [87 Cal.Rptr.2d 132, 980 P.2d 846], internal citations omitted.)
- “To be actionable, ‘a sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.’ That means a plaintiff who subjectively perceives the workplace as hostile or abusive will not prevail under the FEHA, if a reasonable person in the plaintiff’s position, considering all the circumstances, would not share the same perception. Likewise, a plaintiff who does not perceive the workplace as hostile or abusive will not prevail, even if it objectively is so.” (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284 [42 Cal.Rptr.3d 2, 132 P.3d 211], internal citations omitted.)
- “The stray remarks doctrine . . . allows a court to weigh and assess the remarks in isolation, and to disregard the potentially damaging nature of discriminatory remarks simply because they are made by ‘nondecisionmakers, or [made] by decisionmakers unrelated to the decisional process.’ [Defendant] also argues that ambiguous remarks are stray, irrelevant, prejudicial, and inadmissible. However, ‘the task of disambiguating ambiguous utterances is for trial, not for summary

judgment.’ Determining the weight of discriminatory or ambiguous remarks is a role reserved for the jury.” (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 540–541 [113 Cal.Rptr.3d 327, 235 P.3d 988], internal citations omitted.)

- “[I]n reviewing the trial court’s grant of [defendant]’s summary judgment motion, the Court of Appeal properly considered evidence of alleged discriminatory comments made by decision makers and coworkers along with all other evidence in the record.” (*Reid, supra*, 50 Cal.4th at p. 545.)
- “[M]any employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper. Such cases, we caution, are rarely appropriate for disposition on summary judgment, however liberalized it be.” (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286 [100 Cal.Rptr.3d 296].)
- “In contending that the ‘subjectively offensive’ element was not proven, a defendant ‘will assert that a plaintiff consented to the conduct through active participation in it, or was not injured because the plaintiff did not subjectively find it abusive.’ [¶] [Evidence Code] Section 1106 limits the evidence the defendant may use to support this assertion. It provides that ‘[i]n any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of the plaintiff’s sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff’ This general rule is, however, subject to the exception that it ‘does not apply to evidence of the plaintiff’s sexual conduct with the alleged perpetrator.’ The term ‘sexual conduct’ within the meaning of section 1106 has been broadly construed to include ‘all active or passive behavior (whether statements or actions), that either directly or through reasonable inference establishes a plaintiff’s willingness to engage in sexual activity,’ including ‘racy banter, sexual horseplay, and statements concerning prior, proposed, or planned sexual exploits.’ ” (*Meeks v. AutoZone, Inc.* (2018) 24 Cal.App.5th 855, 874 [235 Cal.Rptr.3d 161], internal citations omitted.)
- “[A]llegations of a racially hostile work-place must be assessed from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff.” (*McGinest v. GTE Serv. Corp.* (9th Cir. 2004) 360 F.3d 1103, 1115.)
- “Under . . . FEHA, sexual harassment can occur between members of the same gender as long as the plaintiff can establish the harassment amounted to discrimination *because of sex*.” (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1525 [169 Cal.Rptr.3d 794], original italics.)
- “[T]here is no requirement that the *motive* behind the sexual harassment must be sexual in nature. ‘[H]arassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.’ Sexual harassment occurs when, as is alleged in this case, sex is used as a weapon to create a hostile work environment.” (*Singleton v. United States Gypsum Co.* (2006) 140 Cal.App.4th 1547, 1564 [45 Cal.Rptr.3d 597], original italics, internal citation omitted.)

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- “The plaintiff must show that the harassing conduct took place because of the plaintiff’s sex, but need not show that the conduct was motivated by sexual desire. For example, a female plaintiff can prevail by showing that the harassment was because of the defendant’s bias against women; she need not show that it was because of the defendant’s sexual interest in women. In every case, however, the plaintiff must show a discriminatory intent or motivation based on gender.” (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 114 [129 Cal.Rptr.3d 384], internal citations omitted.)
- “[A] heterosexual male is subjected to harassment because of sex under the FEHA when attacks on his heterosexual identity are used as a tool of harassment in the workplace, irrespective of whether the attacks are motivated by sexual desire or interest.” (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1239–1240 [166 Cal.Rptr.3d 676].)
- “A recent legislative amendment modifies section 12940, subdivision (j)(4)(C) (a provision of FEHA specifying types of conduct that constitute harassment because of sex) to read: ‘For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. *Sexually harassing conduct need not be motivated by sexual desire.*’ ” (*Lewis, supra*, 224 Cal.App.4th at p. 1527, fn. 8, original italics.)
- “California courts have held so-called ‘me too’ evidence, that is, evidence of gender bias against employees other than the plaintiff, may be admissible evidence in discrimination and harassment cases.” (*Meeks, supra*, 24 Cal.App.5th at p. 871.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 353, 370

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-A, *Sources Of Law Prohibiting Harassment*, ¶¶ 10:18–10:19, 10:22, 10:31 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-B, *Sexual Harassment*, ¶¶ 10:40, 10:110–10:260 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.68, 2.75, Sexual and Other Harassment, §§ 3.1, 3.14, 3.17, 3.21, 3.36, 3.45

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.80[1][a], 41.81[1][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36 (Matthew Bender)

California Civil Practice: Employment Litigation § 2:56 (Thomson Reuters)

**2521B. Work Environment Harassment—Conduct Directed at
Others—Essential Factual Elements—Employer or Entity
Defendant (Gov. Code, §§ 12923, 12940(j))**

[Name of plaintiff] claims that coworkers at [name of defendant] were subjected to harassment based on [describe protected status, e.g., race, gender, or age] and that this harassment created a work environment for [name of plaintiff] that was hostile, intimidating, offensive, oppressive, or abusive.

To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of plaintiff] was [an employee of/an applicant for a position with/a person providing services under a contract with/ an unpaid intern with/a volunteer with] [name of defendant];**
- 2. That [name of plaintiff], although not personally subjected to harassing conduct, personally witnessed harassing conduct that took place in [his/her/nonbinary pronoun] immediate work environment;**
- 3. That the harassing conduct was severe or pervasive;**
- 4. That a reasonable [describe member of protected group, e.g., woman] in [name of plaintiff]’s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**
- 5. That [name of plaintiff] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive toward [e.g., women];**
- 6. [Select applicable basis of defendant’s liability:]**
[That a supervisor engaged in the conduct;]
[or]
[That [name of defendant] [or [his/her/nonbinary pronoun/its] supervisors or agents] knew or should have known of the conduct and failed to take immediate and appropriate corrective action;]
- 7. That [name of plaintiff] was harmed; and**
- 8. That the conduct was a substantial factor in causing [name of plaintiff]’s harm.**

Directions for Use

This instruction is for use in a hostile work environment case if the plaintiff was not the target of the harassing conduct and the defendant is an employer or other entity covered by the FEHA. If the defendant is a labor organization, employment agency, apprenticeship training program or any training program leading to employment (rather than an employer), the instruction should be modified as appropriate. (See Gov. Code, § 12940(j)(1).) Further modification may be necessary if the defendant is a business-entity agent of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See *ibid.*) If the alleged harassment did not occur in the workplace, the instruction should be modified as appropriate. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1051 [58 Cal.Rptr.2d 122] [“[A]s long as the harassment occurs in a work-related context, the employer is liable”].)

For an individual defendant, such as the alleged harasser or plaintiff’s coworker, see CACI No. 2522B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*. For a case in which the plaintiff is the target of the harassment, see CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*. For an instruction for use if the hostile environment is due to sexual favoritism, see CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*. Also read CACI No. 2523, “*Harassing Conduct*” *Explained*, and CACI No. 2524, “*Severe or Pervasive*” *Explained*.

In element 6, select the applicable basis of employer liability: (a) strict liability for a supervisor’s harassing conduct, or (b) the employer’s ratification of the conduct. For a definition of “supervisor,” see CACI No. 2525, *Harassment—“Supervisor” Defined*. If there are both employer and individual supervisor defendants (see CACI No. 2522B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer’s strict liability for supervisor harassment. (*State Dep’t. of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].)

See also the Sources and Authority to CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

Sources and Authority

- Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- “Employer” Defined for Harassment. Government Code section 12940(j)(4)(A).
- Person Providing Services Under Contract. Government Code section 12940(j)(5).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).
- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).
- Perception and Association. Government Code section 12926(o).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA’s definition of employer; we express no view of the scope of a business entity agent’s possible liability under the FEHA’s aider and abettor provision.” (*Raines, supra*, 15 Cal.5th at p. 291, internal citations omitted.)
- “The elements [of a prima facie claim of hostile-environment sexual harassment] are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior.” (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608 [262 Cal.Rptr. 842], footnote omitted.)
- “[T]he adjudicator’s inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff’s work performance. To show such interference, ‘the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.’ It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to ‘make it more difficult to do the job.’ ” (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J.; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)
- “The plaintiff’s work environment is affected not only by conduct directed at

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herself but also by the treatment of others. A woman's perception that her work environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers." (*Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 519 [76 Cal.Rptr.2d 547], internal citations omitted.)

- "Harassment against others in the workplace is only relevant to the plaintiff's case if she has personal knowledge of it. Unless plaintiff witnesses the conduct against others, or is otherwise aware of it, that conduct cannot alter the conditions of her employment and create an abusive working environment. Stated another way, a reasonable person in plaintiff's position would not find the environment hostile or abusive unless that person had knowledge of the objectionable conduct toward others." (*Beyda, supra*, 65 Cal.App.4th at p. 520.)
- "To state that an employee must be the direct victim of the sexually harassing conduct is somewhat misleading as an employee who is subjected to a hostile work environment is a victim of sexual harassment even though no offensive remarks or touchings are directed to or perpetrated upon that employee. Generally, however, sexual conduct that involves or is aimed at persons other than the plaintiff is considered less offensive and severe than conduct that is directed at the plaintiff. A hostile work environment sexual harassment claim by a plaintiff who was not personally subjected to offensive remarks and touchings requires 'an even higher showing' than a claim by one who had been sexually harassed without suffering tangible job detriment: such a plaintiff must 'establish that the sexually harassing conduct permeated [her] direct work environment.' [¶] To meet this burden, the plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does not witness the incidents involving others, 'those incidents cannot affect . . . her perception of the hostility of the work environment.' " (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284–285 [42 Cal.Rptr.3d 2, 132 P.3d 211], internal citations omitted.)
- "[U]nder the FEHA, an employer is strictly liable for *all* acts of sexual harassment by a supervisor. (*State Dep't. of Health Servs., supra*, 31 Cal.4th at p. 1041, original italics.)
- "The applicable language of the FEHA does not suggest that an employer's liability for sexual harassment by a supervisor is constrained by principles of agency law. Had the Legislature so intended, it would have used language in the FEHA imposing the negligence standard of liability on acts of harassment by an employee 'other than an agent,' 'not acting as the employer's agent,' or 'not acting within the scope of an agency for the employer.' By providing instead in section 12940, subdivision (j)(1), that the negligence standard applies to acts of harassment 'by an employee other than an agent *or supervisor*' (italics added), the Legislature has indicated that all acts of harassment by a supervisor are to be exempted from the negligence standard, whether or not the supervisor was then acting as the employer's agent, and that agency principles come into play only

when the harasser is not a supervisor. (*State Dept. of Health Servs.*, *supra*, 31 Cal.4th at p. 1041, original italics.)

- “[I]n order for the employer to avoid strict liability for the supervisor’s actions under the FEHA, the harassment must result from a completely private relationship unconnected with the employment. Otherwise, the employer is strictly liable for the supervisor’s actions regardless of whether the supervisor was acting as the employer’s agent.” (*Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1421 [56 Cal.Rptr.3d 501].)
- “In order to be actionable, it must be shown that respondents knew, or should have known, of the alleged harassment and failed to take appropriate action.” (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 294 [156 Cal.Rptr.3d 851].)
- “If an employee other than an agent or supervisor commits the harassment, and the employer takes immediate and appropriate corrective action when it becomes or reasonably should become aware of the conduct—for example, when the victim or someone else informs the employer—there simply is no ‘unlawful employment practice’ that the FEHA governs.” (*Carrisales v. Dept. of Corrections* (1999) 21 Cal.4th 1132, 1136 [90 Cal.Rptr.2d 804, 988 P.2d 1083], called into doubt on other grounds by statute.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 353, 370

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-B, *Sexual Harassment*, ¶¶ 10:40, 10:110–10:260 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.68, 2.75, Sexual and Other Harassment, §§ 3.1, 3.14, 3.17, 3.21, 3.36, 3.45

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.80[1][a], 41.81[1][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36 (Matthew Bender)

California Civil Practice: Employment Litigation § 2:56 (Thomson Reuters)

2521C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

[Name of plaintiff] claims that [he/she/nonbinary pronoun] was subjected to harassment based on sexual favoritism at [name of defendant] and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, or abusive. “Sexual favoritism” means that another employee has received preferential treatment with regard to promotion, work hours, assignments, or other significant employment benefits or opportunities because of a sexual relationship with an individual representative of the employer who was in a position to grant those preferences.

To establish this claim, [name of plaintiff] must prove all of the following:

- 1. That [name of plaintiff] was [an employee of/an applicant for a position with/a person providing services under a contract with/ an unpaid intern with/a volunteer with] [name of defendant];**
- 2. That there was sexual favoritism in the work environment;**
- 3. That the sexual favoritism was severe or pervasive;**
- 4. That a reasonable [describe member of protected group, e.g., woman] in [name of plaintiff]’s circumstances would have considered the conduct to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism;**
- 5. That [name of plaintiff] considered the conduct to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism;**
- 6. [Select applicable basis of defendant’s liability:]**
[That a supervisor [engaged in the conduct/created the sexual favoritism];]
[or]
[That [name of defendant] [or [his/her/nonbinary pronoun/its] supervisors or agents] knew or should have known of the sexual favoritism and failed to take immediate and appropriate corrective action;]
- 7. That [name of plaintiff] was harmed; and**
- 8. That the conduct was a substantial factor in causing [name of plaintiff]’s harm.**

*Derived from former CACI No. 2521 December 2007; Revised December 2015, May 2018, July 2019, May 2020, November 2021, May 2024**

Directions for Use

This instruction is for use in a hostile work environment case involving sexual favoritism when the defendant is an employer or other entity covered by the FEHA. If the defendant is a labor organization, employment agency, apprenticeship training program or any training program leading to employment (rather than an employer), the instruction should be modified as appropriate. (See Gov. Code, § 12940(j)(1).) Further modification may be necessary if the defendant is a business-entity agent of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See *ibid.*) If the facts of the case support it, the instruction should be modified as appropriate for the applicant’s circumstances.

For an individual defendant, such as the alleged harasser or plaintiff’s coworker, see CACI No. 2522C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant*. For a case in which the plaintiff is the target of harassment based on a protected status such as gender, race, or sexual orientation, see CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*. For an instruction for use if the plaintiff is not the target of the harassment, see CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*. Also read CACI No. 2523, “*Harassing Conduct*” Explained, and CACI No. 2524, “*Severe or Pervasive*” Explained.

In element 6, select the applicable basis of employer liability: (a) strict liability for a supervisor’s harassing conduct, or (b) the employer’s ratification of the conduct. For a definition of “supervisor,” see CACI No. 2525, *Harassment—“Supervisor” Defined*. If there are both employer and individual supervisor defendants (see CACI No. 2522C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer’s strict liability for supervisor harassment. (*State Dep’t of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashidian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].)

See also the Sources and Authority to CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

Sources and Authority

- Declaration of Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- “Employer” Defined for Harassment. Government Code section 12940(j)(4)(A).
- Person Providing Services Under Contract. Government Code section 12940(j)(5).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).
- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).
- Perception and Association. Government Code section 12926(o).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA’s definition of employer; we express no view of the scope of a business entity agent’s possible liability under the FEHA’s aider and abettor provision.” (*Raines, supra*, 15 Cal.5th at p. 291, internal citations omitted.)
- “The elements [of a prima facie claim of hostile-environment sexual harassment] are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior.” (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608 [262 Cal.Rptr. 842], footnote omitted.)
- “[T]he adjudicator’s inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff’s work performance. To show such interference, ‘the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.’ It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to ‘make it more difficult to do the job.’” (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)
- “Following the guidance of the EEOC, and also employing standards adopted in

our prior cases, we believe that an employee may establish an actionable claim of sexual harassment under the FEHA by demonstrating that widespread sexual favoritism was severe or pervasive enough to alter his or her working conditions and create a hostile work environment.” (*Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 466 [30 Cal.Rptr.3d 797, 115 P.3d 77], internal citations omitted.)

- “[S]exual favoritism by a manager may be actionable when it leads employees to believe that ‘they [can] obtain favorable treatment from [the manager] if they became romantically involved with him’, the affair is conducted in a manner ‘so indiscreet as to create a hostile work environment,’ or the manager has engaged in ‘other pervasive conduct . . . which created a hostile work environment.’ ” (*Miller, supra*, 36 Cal.4th at p. 465, internal citations omitted.)
- “[A] romantic relationship between a supervisor and an employee does not, without more, give rise to a sexual discrimination or sexual harassment claim either under the FEHA or the public policy of the state.” (*Proksel v. Gattis* (1996) 41 Cal.App.4th 1626, 1631 [49 Cal.Rptr.2d 322].)
- “The FEHA imposes two standards of employer liability for sexual harassment, depending on whether the person engaging in the harassment is the victim’s supervisor or a nonsupervisory coemployee. The employer is liable for harassment by a nonsupervisory employee only if the employer (a) knew or should have known of the harassing conduct and (b) failed to take immediate and appropriate corrective action. This is a negligence standard. Because the FEHA imposes this negligence standard only for harassment ‘by an employee other than an agent or supervisor’, by implication the FEHA makes the employer strictly liable for harassment by a supervisor.” (*State Dept. of Health Servs., supra*, 31 Cal.4th at pp. 1040–1041, original italics.)
- “The applicable language of the FEHA does not suggest that an employer’s liability for sexual harassment by a supervisor is constrained by principles of agency law. Had the Legislature so intended, it would have used language in the FEHA imposing the negligence standard of liability on acts of harassment by an employee ‘other than an agent,’ ‘not acting as the employer’s agent,’ or ‘not acting within the scope of an agency for the employer.’ By providing instead in section 12940, subdivision (j)(1), that the negligence standard applies to acts of harassment ‘by an employee other than an agent *or supervisor*’ (italics added), the Legislature has indicated that all acts of harassment by a supervisor are to be exempted from the negligence standard, whether or not the supervisor was then acting as the employer’s agent, and that agency principles come into play only when the harasser is not a supervisor. (*State Dept. of Health Servs., supra*, 31 Cal.4th at p. 1041, original italics.)
- “[I]n order for the employer to avoid strict liability for the supervisor’s actions under the FEHA, the harassment must result from a completely private relationship unconnected with the employment. Otherwise, the employer is strictly liable for the supervisor’s actions regardless of whether the supervisor was acting as the employer’s agent.” (*Myers v. Trendwest Resorts, Inc.* (2007)

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148 Cal.App.4th 1403, 1421 [56 Cal.Rptr.3d 501].)

- “In order to be actionable, it must be shown that respondents knew, or should have known, of the alleged harassment and failed to take appropriate action.” (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 294 [156 Cal.Rptr.3d 851].)
- “If an employee other than an agent or supervisor commits the harassment, and the employer takes immediate and appropriate corrective action when it becomes or reasonably should become aware of the conduct—for example, when the victim or someone else informs the employer—there simply is no ‘unlawful employment practice’ that the FEHA governs.” (*Carrisales v. Dept. of Corrections* (1999) 21 Cal.4th 1132, 1136 [90 Cal.Rptr.2d 804, 988 P.2d 1083], called into doubt on other grounds by statute.)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 353, 370

Chin et al., Cal. Practice Guide: Employment Litigation, Ch. 10-B, *Sexual Harassment*, ¶¶ 10:40, 10:110–10:260 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.68, 2.75, Sexual and Other Harassment, §§ 3.1, 3.14, 3.17, 3.21, 3.36, 3.45

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.80[1][a], 41.81[1][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36 (Matthew Bender)

California Civil Practice: Employment Litigation § 2:56 (Thomson Reuters)

2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements

[Name of plaintiff] **claims that** *[name of defendant]* **wrongfully discriminated against** *[him/her/nonbinary pronoun]* **based on** *[his/her/nonbinary pronoun]* **history of** *[a]* *[select term to describe basis of limitations, e.g., physical condition]*. **To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

1. **That** *[name of defendant]* **was** *[an employer/[other covered entity]]*;
2. **That** *[name of plaintiff]* **[was an employee of** *[name of defendant]* **/ applied to** *[name of defendant]* **for a job/[describe other covered relationship to defendant]]**;
3. **That** *[name of defendant]* **knew that** *[name of plaintiff]* **had** **[a history of having]** *[a]* *[e.g., physical condition]* **[that limited** *[insert major life activity]]*;
4. **That** *[name of plaintiff]* **was able to perform the essential job duties of** *[his/her/nonbinary pronoun]* **[current position/the position for which** *[he/she/nonbinary pronoun]* **applied], either with or without reasonable accommodation for** *[his/her/nonbinary pronoun]* *[e.g., condition]*;
5. **[That** *[name of defendant]* **[discharged/refused to hire/[other adverse employment action]]** *[name of plaintiff]*;
- [or]**
[That *[name of defendant]* **subjected** *[name of plaintiff]* **to an adverse employment action];**
- [or]**
[That *[name of plaintiff]* **was constructively discharged];**
6. **That** *[name of plaintiff]*'s **[history of** *[a]* *[e.g., physical condition]* **was a substantial motivating reason for** *[name of defendant]*'s **[decision to** *[discharge/refuse to hire/[other adverse employment action]]* *[name of plaintiff]* **/conduct]**;
7. **That** *[name of plaintiff]* **was harmed; and**
8. **That** *[name of defendant]*'s **conduct was a substantial factor in causing** *[name of plaintiff]*'s **harm.**

[Name of plaintiff] **does not need to prove that** *[name of defendant]* **held any ill will or animosity toward** *[him/her/nonbinary pronoun]* **personally because** *[he/she/nonbinary pronoun]* **was** *[perceived to be]* **disabled. [On the other hand, if you find that** *[name of defendant]* **did hold ill will or**

animosity toward [name of plaintiff] because [he/she/nonbinary pronoun] was [perceived to be] disabled, you may consider this fact, along with all the other evidence, in determining whether [name of plaintiff]’s [history of [a]] [e.g., physical condition] was a substantial motivating reason for [name of defendant]’s [decision to [discharge/refuse to hire/[other adverse employment action]]] [name of plaintiff]/conduct].

*New September 2003; Revised June 2006, December 2007, April 2009, December 2009, June 2010, June 2012, June 2013, December 2014, December 2016, May 2019, May 2020, May 2024**

Directions for Use

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

In the introductory paragraph and in elements 3 and 6, select the bracketed language on “history” of disability if the claim of discrimination is based on a history of disability rather than a current actual disability.

For element 1, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA, which can include business entities acting as agents of employers. (Gov. Code, § 12926(d); *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(b)–(h), (j), (k).)

This instruction is for use by both an employee and a job applicant. Select the appropriate options in elements 2, 5, and 6 depending on the plaintiff’s status.

Modify elements 3 and 6 if the plaintiff was not actually disabled or had a history of disability, but alleges discrimination because the plaintiff was perceived to be disabled. (See Gov. Code, § 12926(o); see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer].) This can be done with language in element 3 that the employer “treated [name of plaintiff] as if [he/she/nonbinary pronoun] . . .” and with language in element 6 “That [name of employer]’s belief that . . .”

If the plaintiff alleges discrimination on the basis of the plaintiff’s association with someone who was or was perceived to be disabled, give CACI No. 2547, *Disability-Based Associational Discrimination—Essential Factual Elements*. (See *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 655–660 [163 Cal.Rptr.3d 392] [claim for “disability based associational discrimination” adequately pled].)

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i))

is alleged, omit “that limited [*insert major life activity*]” in element 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Regarding element 4, it is now settled that the ability to perform the essential duties of the job, with or without reasonable accommodation, is an element of the plaintiff’s burden of proof. (See *Green v. State of California* (2007) 42 Cal.4th 254, 257–258 [64 Cal.Rptr.3d 390, 165 P.3d 118].)

Read the first option for element 5 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” *Explained*, if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 5 and also give CACI No. 2510, “*Constructive Discharge*” *Explained*. Select “conduct” in element 6 if either the second or third option is included for element 5.

Element 6 requires that the disability be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, “*Substantial Motivating Reason*” *Explained*.)

Give the optional sentence in the last paragraph if there is evidence that the defendant harbored personal animus against the plaintiff because of the plaintiff’s disability.

If the existence of a qualifying disability is disputed, consider giving special instructions defining “medical condition,” “mental disability,” and “physical disability.” (See Gov. Code, § 12926(i), (j), (m) [defining “medical condition,” “mental disability,” and “physical disability”]; see also Cal. Code Regs., tit. 2, § 11065.)

Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Inability to Perform Essential Job Duties. Government Code section 12940(a)(1).
- “Medical Condition” Defined. Government Code section 12926(i).
- “Mental Disability” Defined. Government Code section 12926(j).
- “Physical Disability” Defined. Government Code section 12926(m).
- Perception of Disability and Association With Person Who Has or Is Perceived to Have Disability Protected. Government Code section 12926(o).
- “Substantial” Limitation Not Required. Government Code section 12926.1(c).
- “The California Fair Employment and Housing Act, which defines ‘employer’ to ‘include[]’ ‘any person acting as an agent of an employer,’ permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate

circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA's definition of employer; we express no view of the scope of a business entity agent's possible liability under the FEHA's aider and abettor provision." (*Raines, supra*, 15 Cal.5th at p. 291, internal citations omitted.)

- “[T]he plaintiff initially has the burden to establish a prima facie case of discrimination. The plaintiff can meet this burden by presenting evidence that demonstrates, even circumstantially or by inference, that he or she (1) suffered from a disability, or was regarded as suffering from a disability; (2) could perform the essential duties of the job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability. To establish a prima facie case, a plaintiff must show ‘ “ “actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a [prohibited] discriminatory criterion” ’’ The prima facie burden is light; the evidence necessary to sustain the burden is minimal. As noted above, while the elements of a plaintiff’s prima facie case can vary considerably, generally an employee need only offer sufficient circumstantial evidence to give rise to a reasonable *inference* of discrimination.” (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 310 [115 Cal.Rptr.3d 453], original italics, internal citations omitted.)
- “The distinction between cases involving *direct evidence* of the employer’s motive for the adverse employment action and cases where there is only *circumstantial evidence* of the employer’s discriminatory motive is critical to the outcome of this appeal. There is a vast body of case law that addresses proving discriminatory intent in cases where there was no direct evidence that the adverse employment action taken by the employer was motivated by race, religion, national origin, age or sex. In such cases, proof of discriminatory motive is governed by the three-stage burden-shifting test established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed.2d 668].” (*Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 123 [199 Cal.Rptr.3d 462], original italics, footnote and internal citations omitted.)
- “The three-stage framework and the many principles adopted to guide its application do not apply in discrimination cases where, like here, the plaintiff presents direct evidence of the employer’s motivation for the adverse employment action. In many types of discrimination cases, courts state that direct evidence of intentional discrimination is rare, but disability discrimination cases often involve direct evidence of the role of the employee’s actual or perceived *disability* in the employer’s decision to implement an adverse

employment action. Instead of litigating the employer’s reasons for the action, the parties’ disputes in disability cases focus on whether the employee was able to perform essential job functions, whether there were reasonable accommodations that would have allowed the employee to perform those functions, and whether a reasonable accommodation would have imposed an undue hardship on the employer. To summarize, courts and practitioners should not automatically apply principles related to the *McDonnell Douglas* test to disability discrimination cases. Rather, they should examine the critical threshold issue and determine whether there is direct evidence that the motive for the employer’s conduct was related to the employee’s physical or mental condition.” (*Wallace, supra*, 245 Cal.App.4th at p. 123, original italics, footnote and internal citations omitted; cf. *Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 234 fn. 3 [206 Cal.Rptr.3d 841] [case did not present so-called “typical” disability discrimination case, as described in *Wallace*, in that the parties disputed the employer’s reasons for terminating plaintiff’s employment].)

- “If the employee meets this [prima facie] burden, it is then incumbent on the employer to show that it had a legitimate, nondiscriminatory reason for its employment decision. When this showing is made, the burden shifts back to the employee to produce substantial evidence that employer’s given reason was either ‘untrue or pretextual,’ or that the employer acted with discriminatory animus, in order to raise an inference of discrimination.” (*Furtado v. State Personnel Bd.* (2013) 212 Cal.App.4th 729, 744 [151 Cal.Rptr.3d 292], internal citations omitted.)
- “Although the same statutory language that prohibits disability discrimination also prohibits discrimination based on race, age, sex, and other factors, we conclude that disability discrimination claims are fundamentally different from the discrimination claims based on the other factors listed in section 12940, subdivision (a). These differences arise because (1) additional statutory provisions apply to disability discrimination claims, (2) the Legislature made separate findings and declarations about protections given to disabled persons, and (3) discrimination cases involving race, religion, national origin, age and sex, often involve pretexts for the adverse employment action—an issue about motivation that appears less frequently in disability discrimination cases.” (*Wallace, supra*, 245 Cal.App.4th at p. 122.)
- “[Defendant] argues that, because [it] hired plaintiffs as recruit officers, they must show they were able to perform the essential functions of a police recruit in order to be qualified individuals entitled to protection under FEHA. [Defendant] argues that plaintiffs cannot satisfy their burden of proof under FEHA because they failed to show that they could perform those essential functions. [¶] Plaintiffs do not directly respond to [defendant]’s argument. Instead, they contend that the relevant question is whether they could perform the essential functions of the positions to which they sought reassignment. Plaintiffs’ argument improperly conflates the legal standards for their claim under section 12940, subdivision (a), for discrimination, and their claim under section

12940, subdivision (m), for failure to make reasonable accommodation, including reassignment. In connection with a discrimination claim under section 12940, subdivision (a), the court considers whether a plaintiff could perform the essential functions of the job held—or for job applicants, the job desired—with or without reasonable accommodation.” (*Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 716–717 [214 Cal.Rptr.3d 113].)

- “Summary adjudication of the section 12940(a) claim . . . turns on . . . whether [plaintiff] could perform the essential functions of the relevant job with or without accommodation. [Plaintiff] does not dispute that she was unable to perform the essential functions of her *former* position as a clothes fitter with or without accommodation. Under federal law, however, when an employee seeks accommodation by being reassigned to a vacant position in the company, the employee satisfies the ‘qualified individual with a disability’ requirement by showing he or she can perform the essential functions of the *vacant position* with or without accommodation. The position must exist and be vacant, and the employer need not promote the disabled employee. We apply the same rule here. To prevail on summary adjudication of the section 12940(a) claim, [defendant] must show there is no triable issue of fact about [plaintiff]’s ability, with or without accommodation, to perform the essential functions of an available vacant position that would not be a promotion.” (*Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 965 [83 Cal.Rptr.3d 190], original italics, internal citations omitted.)
- “To establish a prima facie case of mental disability discrimination under FEHA, a plaintiff must show the following elements: (1) She suffers from a mental disability; (2) she is otherwise qualified to do the job with or without reasonable accommodation; and (3) she was subjected to an adverse employment action because of the disability.” (*Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 84 [187 Cal.Rptr.3d 745].)
- “At most, [plaintiff] alleges only that he anticipated becoming disabled for some time after the organ donation. This is insufficient. [Plaintiff] cannot pursue a cause of action for discrimination under FEHA on the basis of his ‘actual’ physical disability in the absence of factual allegations that he was in fact, physically disabled.” (*Rope, supra*, 220 Cal.App.4th at p. 659.)
- “[Defendant] asserts the statute’s ‘regarded as’ protection is limited to persons who are denied or who lose jobs based on an employer’s reliance on the ‘myths, fears or stereotypes’ frequently associated with disabilities. . . . However, the statutory language does not expressly restrict FEHA’s protections to the narrow class to whom [defendant] would limit its coverage. To impose such a restriction would exclude from protection a large group of individuals, like [plaintiff], with more mundane long-term medical conditions, the significance of which is exacerbated by an employer’s failure to reasonably accommodate. Both the policy and language of the statute offer protection to a person who is not actually disabled, but is wrongly perceived to be. The statute’s plain language leads to the conclusion that the ‘regarded as’ definition casts a broader net and

protects *any* individual ‘regarded’ or ‘treated’ by an employer ‘as having, or having had, any physical condition that makes achievement of a major life activity difficult’ or may do so in the future. We agree most individuals who sue exclusively under this definitional prong likely are and will continue to be victims of an employer’s ‘mistaken’ perception, based on an unfounded fear or stereotypical assumption. Nevertheless, FEHA’s protection is nowhere expressly premised on such a factual showing, and we decline the invitation to import such a requirement.” (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 53 [43 Cal.Rptr.3d 874], original italics, internal citations omitted.)

- “[T]he purpose of the ‘regarded-as’ prong is to protect individuals rejected from a job because of the ‘myths, fears and stereotypes’ associated with disabilities. In other words, to find a perceived disability, the perception must stem from a false idea about the existence of or the limiting effect of a disability.” (*Diffey v. Riverside County Sheriff’s Dept.* (2000) 84 Cal.App.4th 1031, 1037 [101 Cal.Rptr.2d 353], internal citation omitted.)
- “We say on this record that [defendant] took action against [plaintiff] based on concerns or fear about his possible future disability. The relevant FEHA definition of an individual regarded as disabled applies only to those who suffer certain specified physical disabilities or those who have a condition with ‘no present disabling effect’ but which ‘may become a physical disability’ According to the pleadings, [defendant] fired [plaintiff] to avoid accommodating him because of his association with his physically disabled sister. That is not a basis for liability under the ‘regarded as’ disabled standard.” (*Rope, supra*, 220 Cal.App.4th at p. 659, internal citations omitted.)
- “‘[A]n employer “knows an employee has a disability when the employee tells the employer about his condition, or when the employer otherwise becomes aware of the condition, such as through a third party or by observation. The employer need only know the underlying facts, not the legal significance of those facts.” ’” (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 592 [210 Cal.Rptr.3d 59].)
- “‘An adverse employment decision cannot be made “because of” a disability, when the disability is not known to the employer. Thus, in order to prove [a discrimination] claim, a plaintiff must prove the employer had knowledge of the employee’s disability when the adverse employment decision was made. . . . While knowledge of the disability can be inferred from the circumstances, knowledge will only be imputed to the employer when the fact of disability is the only reasonable interpretation of the known facts. “Vague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice of its obligations”’” (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1008 [93 Cal.Rptr.3d 338].)
- “[W]e interpret FEHA as authorizing an employer to distinguish between disability-caused misconduct and the disability itself in the narrow context of threats or violence against coworkers. If employers are not permitted to make this distinction, they are caught on the horns of a dilemma. They may not

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discriminate against an employee based on a disability but, at the same time, must provide all employees with a safe work environment free from threats and violence.” (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 166 [125 Cal.Rptr.3d 1], internal citations omitted.)

- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply a motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, . . . proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris, supra*, 56 Cal.4th at p. 232, original italics.)
- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a ‘but for’ cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “We note that the court in *Harris* discussed the employer’s motivation and the link between the employer’s consideration of the plaintiff’s physical condition and the adverse employment action without using the terms ‘animus,’ ‘animosity,’ or ‘ill will.’ The absence of a discussion of these terms necessarily implies an employer can violate section 12940, subdivision (a) by taking an adverse employment action against an employee “because of” the employee’s physical disability even if the employer harbored no animosity or ill will against the employee or the class of persons with that disability.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)
- “Based on *Harris*, we conclude that an employer has treated an employee differently ‘because of’ a disability when the disability is a substantial motivating reason for the employer’s decision to subject the [employee] to an adverse employment action. This conclusion resolves how the jury should have been instructed on [defendant]’s motivation or intent in connection with the disability discrimination claim.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)
- “We conclude that where, as here, an employee is found to be able to safely perform the essential duties of the job, a plaintiff alleging disability discrimination can establish the requisite employer intent to discriminate by proving (1) the employer knew that plaintiff had a physical condition that limited a major life activity, or perceived him to have such a condition, and (2) the plaintiff’s actual or perceived physical condition was a substantial motivating reason for the defendant’s decision to subject the plaintiff to an adverse employment action. . . . [T]his conclusion is based on (1) the interpretation of section 12940’s term ‘because of’ adopted in *Harris*; (2) our discussion of the meaning of the statutory phrase ‘to discriminate against’; and (3) the guidance provided by the current versions of CACI Nos. 2540 and 2507. [¶] Therefore,

the jury instruction that [plaintiff] was required to prove that [defendant] ‘regarded or treated [him] as having a disability in order to discriminate’ was erroneous.” (*Wallace, supra*, 245 Cal.App.4th at p. 129.)

- “The word ‘animus’ is ambiguous because it can be interpreted narrowly to mean ‘ill will’ or ‘animosity’ or can be interpreted broadly to mean ‘intention.’ In this case, it appears [defendant] uses ‘animus’ to mean something more than the intent described by the substantial-motivating-reason test adopted in *Harris*.” (*Wallace, supra*, 245 Cal.App.4th at p. 130, fn. 14, internal citation omitted.)
- “[W]eight may qualify as a protected “handicap” or “disability” within the meaning of the FEHA if medical evidence demonstrates that it results from a physiological condition affecting one or more of the basic bodily systems and limits a major life activity.’ . . . ‘[A]n individual who asserts a violation of the FEHA on the basis of his or her weight must adduce evidence of a physiological, systemic basis for the condition.’ ” (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 928 [227 Cal.Rptr.3d 286].)
- “Being unable to work during pregnancy is a disability for the purposes of section 12940.” (*Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1340 [153 Cal.Rptr.3d 367].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1045–1051

Chin et al., California Practice Guide: Employment Litigation, Ch. 9-C, *California Fair Employment And Housing Act (FEHA)*, ¶¶ 9:2160–9:2241 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.78–2.80

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.11, 41.32[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.22[8], 115.23[2] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:46 (Thomson Reuters)

**2541. Disability Discrimination—Reasonable
Accommodation—Essential Factual Elements (Gov. Code,
§ 12940(m))**

[Name of plaintiff] **claims that** *[name of defendant]* **failed to reasonably accommodate** *[his/her/nonbinary pronoun]* *[select term to describe basis of limitations, e.g., physical condition]*. **To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

- 1. That** *[name of defendant]* **was** *[an employer/[other covered entity]]*;
- 2. That** *[name of plaintiff]* **[was an employee of** *[name of defendant]* **]** **applied to** *[name of defendant]* **for a job**/*[describe other covered relationship to defendant]*];
- 3. That** *[[name of plaintiff] had/[name of defendant] treated* *[name of plaintiff]* **as if** *[he/she/nonbinary pronoun]* **had]** **[a]** *[e.g., physical condition]* **[that limited** *[insert major life activity]*];
- [4. That** *[name of defendant]* **knew of** *[name of plaintiff]*'s *[e.g., physical condition]* **[that limited** *[insert major life activity]*];
- 5. That** *[name of plaintiff]* **was able to perform the essential duties of** *[[his/her/nonbinary pronoun] current position or a vacant alternative position to which* *[he/she/nonbinary pronoun]* **could have been reassigned/the position for which *[he/she/nonbinary pronoun]* **applied]** **with reasonable accommodation for** *[his/her/nonbinary pronoun]* *[e.g., physical condition]*;**
- 6. That** *[name of defendant]* **failed to provide reasonable accommodation for** *[name of plaintiff]*'s *[e.g., physical condition]*;
- 7. That** *[name of plaintiff]* **was harmed; and**
- 8. That** *[name of defendant]*'s **failure to provide reasonable accommodation was a substantial factor in causing** *[name of plaintiff]*'s **harm.**

[In determining whether *[name of plaintiff]*'s *[e.g., physical condition]* **limits** *[insert major life activity]*, **you must consider the** *[e.g., physical condition]* **[in its unmedicated state/without assistive devices/[describe mitigating measures]].]**

*New September 2003; Revised April 2007, December 2007, April 2009, December 2009, June 2010, December 2011, June 2012, June 2013, May 2019, May 2023, May 2024**

Directions for Use

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

For element 1, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA, which can include business entities acting as agents of employers. (Gov. Code, § 12926(d); *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(b)–(h), (j), (k).)

This instruction is for use by both an employee and a job applicant. Select the appropriate options in elements 2 and 5 depending on the plaintiff’s status.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in elements 3 and 4 and do not include the last paragraph. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

In a case of perceived disability, include “[*name of defendant*] treated [*name of plaintiff*] as if [he/she/nonbinary pronoun] had” in element 3, and delete optional element 4. (See Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer].) In a case of actual disability, include “[*name of plaintiff*] had” in element 3, and give element 4.

If the existence of a qualifying disability is disputed, consider giving special instructions defining “medical condition,” “mental disability,” and “physical disability.” (See Gov. Code, § 12926(i), (j), (m) [defining “medical condition,” “mental disability,” and “physical disability”]; see also Cal. Code Regs., tit. 2, § 11065.)

The California Supreme Court has held that under Government Code section 12940(a), the plaintiff is required to prove that he or she has the ability to perform the essential duties of the job with or without reasonable accommodation. (See *Green v. State of California* (2007) 42 Cal.4th 254, 260 [64 Cal.Rptr.3d 390, 165 P.3d 118].) While the court left open the question of whether the same rule should apply to cases under Government Code section 12940(m) (see *id.* at p. 265), appellate courts have subsequently placed the burden on the employee to prove that he or she would be able to perform the job duties with reasonable accommodation (see element 5). (See *Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 766 [123 Cal.Rptr.3d 562]; *Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 973–979 [83 Cal.Rptr.3d 190].)

There may still be an unresolved issue if the employee claims that the employer failed to provide the employee with other suitable job positions that the employee might be able to perform with reasonable accommodation. The rule has been that

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the employer has an affirmative duty to make known to the employee other suitable job opportunities and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship or if the employer offers similar assistance or benefit to any other employees or has a policy of offering such assistance or benefit to any other employees. (*Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 950–951 [62 Cal.Rptr.2d 142]; see also *Furtado v. State Personnel Bd.* (2013) 212 Cal.App.4th 729, 745 [151 Cal.Rptr.3d 292]; *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 243 [35 Cal.Rptr.3d 837]; *Hanson v. Lucky Stores* (1999) 74 Cal.App.4th 215, 226 [87 Cal.Rptr.2d 487].) In contrast, other courts have said that it is the employee’s burden to prove that a reasonable accommodation could have been made, i.e., that the employee was qualified for a position in light of the potential accommodation. (See *Nadaf-Rahrov, supra*, 166 Cal.App.4th at p. 978; see also *Cuiellette, supra*, 194 Cal.App.4th at p. 767 [plaintiff proves he or she is a qualified individual by establishing that he or she can perform the essential functions of the position to which reassignment is sought].) The question of whether the employee has to present evidence of other suitable job descriptions and prove that a vacancy existed for a position that the employee could do with reasonable accommodation may not be fully resolved.

No element has been included that requires the plaintiff to specifically request reasonable accommodation. Unlike Government Code section 12940(n) on the interactive process (see CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process*), section 12940(m) does not specifically require that the employee request reasonable accommodation; it requires only that the employer know of the disability. (See *Prilliman, supra*, 53 Cal.App.4th at pp. 950–951.)

Sources and Authority

- Reasonable Accommodation Required. Government Code section 12940(m).
- “Reasonable Accommodation” Explained. Government Code section 12926(p).
- “Medical Condition” Defined. Government Code section 12926(i).
- “Mental Disability” Defined. Government Code section 12926(j).
- “Physical Disability” Defined. Government Code section 12926(m).
- “Substantial” Limitation Not Required. Government Code section 12926.1(c).
- “Under FEHA, an employer is required ‘to make reasonable accommodation for the known physical or mental disability of an applicant or employee.’ Relatedly, the employer is required ‘to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability’ ” (*Lin v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 712, 728 [304 Cal.Rptr.3d 820], internal citations omitted.)
- “There are three elements to a failure to accommodate action: ‘(1) the plaintiff

has a disability covered by the FEHA; (2) the plaintiff is a qualified individual (i.e., he or she can perform the essential functions of the position); and (3) the employer failed to reasonably accommodate the plaintiff’s disability. [Citation.]” (*Hernandez v. Rancho Santiago Cmty. College Dist.* (2018) 22 Cal.App.5th 1187, 1193–1194 [232 Cal.Rptr.3d 349].)

- “Under the FEHA, ‘reasonable accommodation’ means ‘a modification or adjustment to the workplace that enables the employee to perform the essential functions of the job held or desired.’” (*Cuiellette, supra*, 194 Cal.App.4th at p. 766.)
- “Reasonable accommodations include ‘[j]ob restructuring, part-time or modified work schedules, *reassignment to a vacant position*, . . . and other similar accommodations for individuals with disabilities.’” (*Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 968 [181 Cal.Rptr.3d 553], original italics.)
- “The examples of reasonable accommodations in the relevant statutes and regulations include reallocating nonessential functions or modifying how or when an employee performs an essential function, but not eliminating essential functions altogether. FEHA does not obligate the employer to accommodate the employee by excusing him or her from the performance of essential functions.” (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 375 [184 Cal.Rptr.3d 9].)
- “A term of leave from work can be a reasonable accommodation under FEHA, and, therefore, a request for leave can be considered to be a request for accommodation under FEHA.” (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 243 [206 Cal.Rptr.3d 841], internal citation omitted.)
- “Failure to accommodate claims are not subject to the *McDonnell Douglas* burden-shifting framework.” (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 926 [227 Cal.Rptr.3d 286].)
- “The question now arises whether it is the employees’ burden to prove that a reasonable accommodation could have been made, i.e., that they were qualified for a position in light of the potential accommodation, or the employers’ burden to prove that no reasonable accommodation was available, i.e., that the employees were not qualified for any position because no reasonable accommodation was available. [¶¶] Applying *Green’s* burden of proof analysis to section 12940(m), we conclude that the burden of proving ability to perform the essential functions of a job with accommodation should be placed on the plaintiff under this statute as well. First, . . . an employee’s ability to perform the essential functions of a job is a prerequisite to liability under section 12940(m). Second, the Legislature modeled section 12940(m) on the federal reasonable accommodation requirement (adopting almost verbatim the federal statutory definition of ‘reasonable accommodation’ by way of example). Had the Legislature intended the employer to bear the burden of proving ability to

perform the essential functions of the job, contrary to the federal allocation of the burden of proof, . . . it could have expressly provided for that result, but it did not. Finally, general evidentiary principles support allocating the burden of proof on this issue to the plaintiff.” (*Nadaf-Rahrov, supra*, 166 Cal.App.4th at pp. 977–978, internal citations omitted.)

- “ ‘If the employee cannot be accommodated in his or her existing position and the requested accommodation is reassignment, an employer must make affirmative efforts to determine whether a position is available. [Citation.] A reassignment, however, is not required if “there is no vacant position for which the employee is qualified.” [Citations.] “The responsibility to reassign a disabled employee who cannot otherwise be accommodated does ‘not require creating a new job, moving another employee, promoting the disabled employee or violating another employee’s rights’ ” [Citations.] “What is required is the ‘duty to reassign a disabled employee if an already funded, vacant position at the same level exists.’ [Citations.]” [Citations.]” (*Furtado, supra*, 212 Cal.App.4th at p. 745.)
- “[A]n employee’s probationary status does not, in and of itself, deprive an employee of the protections of FEHA, including a reasonable reassignment. The statute does not distinguish between the types of reasonable accommodations an employer may have to provide to employees on probation or in training and those an employer may have to provide to other employees. We decline to read into FEHA a limitation on an employee’s eligibility for reassignment based on an employee’s training or probationary status. Instead, the trier of fact should consider whether an employee is on probation or in training in determining whether a particular reassignment is comparable in pay and status to the employee’s original position.” (*Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 724 [214 Cal.Rptr.3d 113], internal citations omitted.)
- “[A] disabled employee seeking reassignment to a vacant position ‘is entitled to preferential consideration.’ ” (*Swanson, supra*, 232 Cal.App.4th at p. 970.)
- “ ‘Generally, “ [t]he employee bears the burden of giving the employer notice of the disability.’ ” ’ An employer, in other words, has no affirmative duty to investigate whether an employee’s illness might qualify as a disability. ‘ “ [T]he employee can’t expect the employer to read his mind and know he secretly wanted a particular accommodation and sue the employer for not providing it. Nor is an employer ordinarily liable for failing to accommodate a disability of which it had no knowledge.’ ” ’ ” (*Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1167 [217 Cal.Rptr.3d 258], internal citations omitted.)
- “ “[A]n employer “knows an employee has a disability when the employee tells the employer about his condition, or when the employer otherwise becomes aware of the condition, such as through a third party or by observation.” ’ . . . [¶] ‘While knowledge of the disability can be inferred from the circumstances, knowledge will only be imputed to the employer when the fact of disability is the *only* reasonable interpretation of the known facts. “Vague

or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice of its obligations under the [FEHA].” ’ ’ ”
 (*Featherstone, supra*, 10 Cal.App.5th at p. 1167, internal citations omitted.)

- “In other words, so long as the employer is aware of the employee’s condition, there is no requirement that the employer be aware that the condition is considered a disability under the FEHA. By the same token, it is insufficient to tell the employer merely that one is disabled or requires an accommodation.”
 (*Cornell, supra*, 18 Cal.App.5th at p. 938, internal citation omitted.)
- “ “ “ ‘This notice then triggers the employer’s burden to take “positive steps” to accommodate the employee’s limitations. . . . [¶] . . . The employee, of course, retains a duty to cooperate with the employer’s efforts by explaining [his or her] disability and qualifications. [Citation.] Reasonable accommodation thus envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the [employee’s] capabilities and available positions.’ ” ’ ” (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 598 [210 Cal.Rptr.3d 59].)
- “Employers must make reasonable accommodations to the disability of an individual unless the employer can demonstrate that doing so would impose an ‘undue hardship.’ ” (*Prilliman, supra*, 53 Cal.App.4th at p. 947.)
- “ ‘Ordinarily the reasonableness of an accommodation is an issue for the jury.’ ” (*Prilliman, supra*, 53 Cal.App.4th at p. 954, internal citation omitted.)
- “[T]he duty of an employer to provide reasonable accommodation for an employee with a disability is broader under the FEHA than under the ADA.”
 (*Bagatti, supra*, 97 Cal.App.4th at p. 362.)
- “[A]n employer is relieved of the duty to reassign a disabled employee whose limitations cannot be reasonably accommodated in his or her current job only if reassignment would impose an ‘undue hardship’ on its operations” (*Atkins, supra*, 8 Cal.App.5th at p. 721.)
- “The question whether plaintiffs could perform the essential functions of a position to which they sought reassignment is relevant to a claim for failure to accommodate under section 12940, subdivision (m)” (*Atkins, supra*, 8 Cal.App.5th at p. 717.)
- “On these issues, which are novel to California and on which the federal courts are divided, we conclude that employers must reasonably accommodate individuals falling within any of FEHA’s statutorily defined ‘disabilities,’ including those ‘regarded as’ disabled, and must engage in an informal, interactive process to determine any effective accommodations.” (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 55 [43 Cal.Rptr.3d 874].)
- “While a claim of failure to accommodate is independent of a cause of action for failure to engage in an interactive dialogue, each necessarily implicates the other.” (*Moore, supra*, 248 Cal.App.4th at p. 242.)
- “[A] pretextual termination of a perceived-as-disabled employee’s employment in

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lieu of providing reasonable accommodation or engaging in the interactive process does not provide an employer a reprieve from claims for failure to accommodate and failure to engage in the interactive process.” (*Moore, supra*, 248 Cal.App.4th at p. 244.)

- “Appellant also stated a viable claim under section 12940, subdivision (m), which mandates that an employer provide reasonable accommodations for the known physical disability of an employee. She alleged that she was unable to work during her pregnancy, that she was denied reasonable accommodations for her pregnancy-related disability and terminated, and that the requested accommodations would not have imposed an undue hardship on [defendant]. A finite leave of greater than four months may be a reasonable accommodation for a known disability under the FEHA.” (*Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1341 [153 Cal.Rptr.3d 367].)
- “To the extent [plaintiff] claims the [defendant] had a duty to await a vacant position to arise, he is incorrect. A finite leave of absence may be a reasonable accommodation to allow an employee time to recover, but FEHA does not require the employer to provide an indefinite leave of absence to await possible future vacancies.” (*Nealy, supra*, 234 Cal.App.4th at pp. 377–378.)
- “While ‘a finite leave can be a reasonable accommodation under FEHA, provided it is likely that at the end of the leave, the employee would be able to perform . . . her duties,’ a finite leave is not a reasonable accommodation when the leave leads directly to termination of employment because the employee’s performance could not be evaluated while she was on the leave.” (*Hernandez, supra*, 22 Cal.App.5th at p. 1194.)

Secondary Sources

10 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 977, 1048

Chin et al., California Practice Guide: Employment Litigation, Ch. 9-C, *California Fair Employment And Housing Act (FEHA)*, ¶¶ 9:2250–9:2285, 9:2345–9:2347 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, § 2.79

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.51[3] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.20, 115.35 (Matthew Bender)

California Civil Practice: Employment Litigation § 2:50 (Thomson Reuters)

2547. Disability-Based Associational Discrimination—Essential Factual Elements

[Name of plaintiff] **claims that** *[name of defendant]* **wrongfully discriminated against** *[him/her/nonbinary pronoun]* **based on** *[his/her/nonbinary pronoun]* **association with a person with a disability. To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

1. **That** *[name of defendant]* **was** *[an employer/[other covered entity]]*;
2. **That** *[name of plaintiff]* **[was an employee of** *[name of defendant]* **/ applied to** *[name of defendant]* **for a job/[describe other covered relationship to defendant]]**;
3. **That** *[name of plaintiff]* **was** *[specify basis of association or relationship, e.g., the brother of [name of associate]]*, **who had** *[a]* *[e.g., physical condition]*;
4. **[That** *[name of associate]*'s *[e.g., physical condition]* **was costly to** *[name of defendant]* **because** *[specify reason, e.g., [name of associate] was covered under [plaintiff]'s employer-provided health care plan];]*

[or]

[That *[name of defendant]* **feared** *[name of plaintiff]*'s **association with** *[name of associate]* **because** *[specify, e.g., [name of associate] has a disability with a genetic component and [name of plaintiff] may develop the disability as well];]*

[or]

[That *[name of plaintiff]* **was somewhat inattentive at work because** *[name of associate]*'s *[e.g., physical condition]* **requires** *[name of plaintiff]*'s **attention, but not so inattentive that to perform to** *[name of defendant]*'s **satisfaction** *[name of plaintiff]* **would need an accommodation;]**

[or]

[[Specify other basis for associational discrimination];]

5. **That** *[name of plaintiff]* **was able to perform the essential job duties;**
6. **[That** *[name of defendant]* **[discharged/refused to hire/[other adverse employment action]]** *[name of plaintiff];]*

[or]

[That *[name of defendant]* **subjected** *[name of plaintiff]* **to an**

adverse employment action;]

[*or*]

[That [name of plaintiff] was constructively discharged;]

- 7. That [name of plaintiff]’s association with [name of associate] was a substantial motivating reason for [name of defendant]’s [decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct];**
- 8. That [name of plaintiff] was harmed; and**
- 9. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.**

*New December 2014; Revised May 2017, May 2020, November 2023, May 2024**

Directions for Use

Give this instruction if plaintiff claims that the plaintiff was subjected to an adverse employment action because of the plaintiff’s association with a person with a disability or perceived to have a disability. Discrimination based on an employee’s association with a person who is (or is perceived to be) disabled is an unlawful employment practice under the FEHA. (See Gov. Code, § 12926(o).)

For element 1, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA, which can include business entities acting as agents of employers. (Gov. Code, § 12926(d); *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(b)–(h), (j), (k).)

Select a term to use throughout to describe the source of the person’s disability. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Three versions of disability-based associational discrimination have been recognized, called “expense,” “disability by association,” and “distraction.” (See *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 655–660 [163 Cal.Rptr.3d 392] [claim for “disability-based associational discrimination” adequately pled].) Element 4 sets forth options for the three versions, which are illustrative rather than exhaustive; therefore, an “other” option is provided. (See *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1042 [207 Cal.Rptr.3d 120].)

An element of a disability discrimination case is that the plaintiff must be otherwise qualified to do the job, with or without reasonable accommodation. (*Green v. State*

of California (2007) 42 Cal.4th 254, 262 [64 Cal.Rptr.3d 390, 165 P.3d 118] (see element 5).) However, the FEHA does not expressly require reasonable accommodation for association with a person with a disability. (Gov. Code, § 12940(m) [employer must reasonably accommodate applicant or employee].) Nevertheless, one court has suggested that such a requirement may exist, without expressly deciding the issue. (See *Castro-Ramirez*, *supra*, 2 Cal.App.5th at pp. 1038–1039.) A reference to reasonable accommodation may be added to element 5 if the court decides to impose this requirement.

Read the first option for element 6 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” *Explained*, if the existence of an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 6 and also give CACI No. 2510, “*Constructive Discharge*” *Explained*. Select “conduct” in element 7 if either the second or third option is included for element 4.

Element 7 requires that the disability be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; *Castro-Ramirez*, *supra*, 2 Cal.App.5th at p. 1037; see also CACI No. 2507, “*Substantial Motivating Reason*” *Explained*.)

If the question of whether the associate has a disability is disputed, consider giving special instructions defining “medical condition,” “mental disability,” and “physical disability.” (See Gov. Code, § 12926(i), (j), (m) [defining “medical condition,” “mental disability,” and “physical disability”]; see also Cal. Code Regs., tit. 2, § 11065.)

Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- “Medical Condition” Defined. Government Code section 12926(i).
- “Mental Disability” Defined. Government Code section 12926(j).
- “Physical Disability” Defined. Government Code section 12926(m).
- Association With Person Who Has or Is Perceived to Have a Disability Protected. Government Code section 12926(o).
- “Three types of situation are, we believe, within the intended scope of the rarely litigated . . . association section. We’ll call them “expense,” “disability by association,” and “distraction.” They can be illustrated as follows: an employee is fired (or suffers some other adverse personnel action) because (1) (“expense”) his spouse has a disability that is costly to the employer because the spouse is covered by the company’s health plan; (2a) (“disability by association”) the employee’s homosexual companion is infected with HIV and the employer fears that the employee may also have become infected, through sexual contact with the companion; (2b) (another example of disability by association) one of the employee’s blood relatives has a disabling ailment that has a genetic component

and the employee is likely to develop the disability as well (maybe the relative is an identical twin); (3) (“distraction”) the employee is somewhat inattentive at work because his spouse or child has a disability that requires his attention, yet not so inattentive that to perform to his employer’s satisfaction he would need an accommodation, perhaps by being allowed to work shorter hours.’ ” (*Rope*, *supra*, 220 Cal.App.4th at p. 657.)

- “We agree with *Rope* [*supra*] that *Larimer* [*Larimer v. International Business Machines Corp.* (7th Cir. 2004) 370 F.3d 698] provides an illustrative, rather than an exhaustive, list of the kinds of circumstances in which we might find associational disability discrimination. The common thread among the *Larimer* categories is simply that they are instances in which the ‘employer has a motive to discriminate against a nondisabled employee who is merely associated with a disabled person.’ As we discuss above, this is an element of a plaintiff’s prima facie case—that the plaintiff’s association with a disabled person was a substantial motivating factor for the employer’s adverse employment action. *Rope* held the alleged facts in that case could give rise to an inference of such discriminatory motive. Our facts do not fit neatly within one of the *Larimer* categories either, but a jury could reasonably infer the requisite discriminatory motive.” (*Castro-Ramirez*, *supra*, 2 Cal.App.5th at p. 1042, internal citation omitted.)
- “ ‘[A]n employer who discriminates against an employee because of the latter’s association with a disabled person is liable even if the motivation is purely monetary. But if the disability plays no role in the employer’s decision . . . then there is no *disability* discrimination.’ ” (*Rope*, *supra*, 220 Cal.App.4th at p. 658, original italics.)
- “A prima facie case of disability discrimination under FEHA requires a showing that (1) the plaintiff suffered from a disability, (2) the plaintiff was otherwise qualified to do his or her job, with or without reasonable accommodation, and (3) the plaintiff was subjected to adverse employment action because of the disability. Adapting this [disability discrimination] framework to the associational discrimination context, the ‘disability’ from which the plaintiff suffers is his or her association with a disabled person. . . . [T]he disability must be a substantial factor motivating the employer’s adverse employment action.” (*Castro-Ramirez*, *supra*, 2 Cal.App.5th at p. 1037.)
- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, . . . proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris*, *supra*, 56 Cal.4th at p. 232, original italics.)
- “We do not suggest that discrimination must be alone sufficient to bring about an

employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a ‘but for’ cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)

- “[W]hen section 12940, subdivision (m) requires employers to reasonably accommodate ‘the known physical . . . disability of an applicant or employee,’ read in conjunction with other relevant provisions, subdivision (m) may reasonably be interpreted to require accommodation based on the employee’s association with a physically disabled person.” (*Castro-Ramirez, supra*, 2 Cal.App.5th at pp. 1038–1039.)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 9-C, California Fair Employment And Housing Act (FEHA), ¶¶ 9:2213–9:2215 (The Rutter Group)
2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.32[2], [4] (Matthew Bender)

**2561. Religious Creed Discrimination—Reasonable
Accommodation—Affirmative Defense—Undue Hardship (Gov.
Code, §§ 12940(l)(1), 12926(u))**

[Name of defendant] **claims that accommodating** *[name of plaintiff]*'s **[religious belief/religious observance]** would create an undue hardship to the operation of *[his/her/nonbinary pronoun/its]* business.

To succeed on this defense, *[name of defendant]* must prove that *[he/she/nonbinary pronoun/it]* considered reasonable alternative options for accommodating the **[religious belief/religious observance]**, including (1) excusing *[name of plaintiff]* from duties that conflict with *[his/her/nonbinary pronoun]* **[religious belief/religious observance]**[,] **[or]** (2) permitting those duties to be performed at another time or by another person[, or (3) *[specify other reasonable accommodation]*].

If you decide that *[name of defendant]* considered but did not adopt **[a]** reasonable accommodation[s], you must then decide if the accommodation[s] would have created an undue hardship because it would be significantly difficult or expensive, in light of the following factors:

- a. The nature and cost of the accommodation[s];
- b. *[Name of defendant]*'s ability to pay for the accommodation[s];
- c. The type of operations conducted at the facility;
- d. The impact on the operations of the facility;
- e. The number of *[name of defendant]*'s employees and the relationship of the employees' duties to one another;
- f. The number, type, and location of *[name of defendant]*'s facilities;
and
- g. The administrative and financial relationship of the facilities to one another.

*New September 2003; Revoked December 2012; Restored and Revised June 2013;
Revised November 2019, May 2020, May 2021*

Directions for Use

For religious beliefs and observances, the statute requires the employer (or other covered entity) to demonstrate that the employer explored certain means of accommodating the plaintiff, including two specific possibilities: (1) excusing the plaintiff from duties that conflict with the plaintiff's religious belief or observance or (2) permitting those duties to be performed at another time or by another person.

(Gov. Code, § 12940(l)(1).) If there is evidence of another reasonable alternative accommodation, include it as a third means of accommodating the plaintiff.

Sources and Authority

- Religious Accommodation Required Under Fair Employment and Housing Act. Government Code section 12940(l)(1).
- “Undue Hardship” Defined. Government Code section 12926(u).
- “If the employee proves a prima facie case and the employer fails to initiate an accommodation for the religious practices, the burden is then on the employer to prove it will incur an undue hardship if it accommodates that belief. ‘[T]he extent of undue hardship on the employer’s business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship.’ . . .” (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 371 [58 Cal.Rptr.2d 747], internal citations omitted.)
- “It would be anomalous to conclude that by ‘reasonable accommodation’ Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far. [¶] . . . [¶] Alternatively, the Court of Appeals suggested that [the employer] could have replaced [plaintiff] on his Saturday shift with other employees through the payment of premium wages To require [the employer] to bear more than a de minimus cost . . . is an undue hardship. Like abandonment of the seniority system, to require [the employer] to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion.” (*TWA v. Hardison* (1977) 432 U.S. 63, 81, 84 [97 S.Ct. 2264, 53 L.Ed.2d 113], footnote omitted.)
- “We hold that showing ‘more than a *de minimis* cost,’ as that phrase is used in common parlance, does not suffice to establish ‘undue hardship’ under Title VII. [*TWA v.*] *Hardison* cannot be reduced to that one phrase. In describing an employer’s ‘undue hardship’ defense, *Hardison* referred repeatedly to ‘substantial’ burdens, and that formulation better explains the decision. We therefore . . . understand *Hardison* to mean that ‘undue hardship’ is shown when a burden is substantial in the overall context of an employer’s business. This fact-specific inquiry comports with both *Hardison* and the meaning of ‘undue hardship’ in ordinary speech.” (*Groff v. DeJoy* (2023) 600 U.S. 447 [143 S.Ct. 2279, 2294, 216 L.Ed.2d 1041], original italics, internal citation omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1025, 1026

Chin et al., Cal. Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment and Housing Act*, ¶¶ 7:151, 7:215, 7:305, 7:610, 7:631, 7:640–7:641 (The Rutter Group)

CACI No. 2561

2 Wilcox, *California Employment Law*, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.52[4] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.35[2][a], -[c], 115.54[4], 115.91 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 2:71–2:73 (Thomson Reuters)

1 Lindemann and Grossman, *Employment Discrimination Law* (3d ed.) Religion, pp. 227–234 (2000 supp.) at pp. 100–105

VF-2500. Disparate Treatment (Gov. Code, § 12940(a))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **[employer/*[other covered entity]*]**?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* **[discharge/refuse to hire/*[other adverse employment action]*]** *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s **[protected status]** a substantial motivating reason for *[name of defendant]*'s **[discharge/refusal to hire/*[other adverse employment action]*]**?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s **[discharge/refusal to hire/*[other adverse employment action]*]** a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other past economic loss \$ _____]

Total Past Economic Damages: \$ _____]

[b. Future economic loss

[lost earnings \$ _____]
[lost profits \$ _____]
[medical expenses \$ _____]
[other future economic loss \$ _____]

Total Future Economic Damages: \$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ _____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ _____]

TOTAL \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2013, December 2016

Directions for Use

This verdict form is based on CACI No. 2500, *Disparate Treatment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or

associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2501. Disparate Treatment—Affirmative Defense—Bona fide
Occupational Qualification (Gov. Code, § 12940(a))**

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] an [employer/[*other covered entity*]]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] [an employee of [*name of defendant*]/an applicant to [*name of defendant*] for a job/[*other covered relationship to defendant*]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] [discharge/refuse to hire/[*other adverse employment action*]] [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of plaintiff*]'s [*protected status*] a substantial motivating reason for [*name of defendant*]'s [discharge/refusal to hire/[*other adverse employment action*]]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the job requirement regarding [*protected status*] reasonably necessary for the operation of [*name of defendant*]'s business?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.

6. Did [*name of defendant*] have a reasonable basis for believing that substantially all [*members of protected group*] are unable to safely

prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2502. Disparate Impact (Gov. Code, § 12940(a))

We answer the questions submitted to us as follows:

- 1. Was [name of defendant] an [employer/[other covered entity]]?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Was [name of plaintiff] [an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] have [an employment practice of [describe practice]/a selection policy of [describe policy]] that had a disproportionate adverse effect on [describe protected group—for example, persons over the age of 40]?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Is [name of plaintiff] [protected status]?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Was [name of defendant]’s [employment practice/selection policy] a substantial factor in causing harm to [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 6. What are [name of plaintiff]’s damages?**

[a. Past economic loss

VF-2502

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2503. Disparate Impact (Gov. Code, § 12940(a))—Affirmative
Defense—Business Necessity/Job Relatedness—Rebuttal to
Business Necessity/Job Relatedness Defense**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* have *[an employment practice of [describe practice]/a selection policy of [describe policy]]* that had a **disproportionate adverse effect** on *[describe protected group—for example, persons over the age of 40]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Is *[name of plaintiff]* *[protected status]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the purpose of the *[employment practice/selection policy]* to operate the business safely and efficiently?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.

6. Did the *[employment practice/selection policy]* substantially

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$_____]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2502, *Disparate Impact—Essential Factual Elements*, CACI No. 2503, *Affirmative Defense—Business Necessity/Job Relatedness*, and CACI No. 2504, *Disparate Impact—Rebuttal to Business Necessity/Job Relatedness Defense*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2502.

If specificity is not required, users do not have to itemize all the damages listed in question 10 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2504. Retaliation (Gov. Code, § 12940(h))

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* *[describe protected activity]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* *[discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]*?**

[or]

[Did *[name of defendant]* engage in conduct that, taken as a whole, materially and adversely affected the terms and conditions of *[name of plaintiff]*'s employment?]

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]*'s *[describe protected activity]* a substantial motivating reason for *[name of defendant]*'s **[decision to *[discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]*/conduct]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss

[lost earnings

\$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, August 2007, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2505, *Retaliation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Read the second option for question 2 in cases involving a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. Give both options if the employee presents evidence supporting liability under both a sufficient-single-act theory or a pattern-of-harassment theory. Also select “conduct” in question 3 if the second option or both options are included for question 2.

VF-2504

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2505. Quid pro quo Sexual Harassment

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* an employee of *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of alleged harasser]* make unwanted sexual advances to *[name of plaintiff]* or engage in other unwanted verbal or physical conduct of a sexual nature?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Were terms of employment, job benefits, or favorable working conditions made contingent on *[name of plaintiff]*'s acceptance of *[name of alleged harasser]*'s sexual advances or conduct?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. At the time of *[his/her/nonbinary pronoun]* conduct, was *[name of alleged harasser]* a supervisor or agent for *[name of defendant]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of alleged harasser]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2015, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2520, *Quid pro quo Sexual Harassment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question number 1, as in element 1 in CACI No. 2520.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages,

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2506A. Work Environment Harassment—Conduct Directed at Plaintiff—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] subjected to harassing conduct because [*he/she/nonbinary pronoun*] was [*protected status, e.g., a woman*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2506B. Work Environment Harassment—Conduct Directed at Others—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] personally witness harassing conduct that took place in [*his/her/nonbinary pronoun*] immediate work environment?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive toward [*e.g., women*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021, November 2021, May 2024

Directions for Use

This verdict form is based on CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521B. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2506C. Work Environment Harassment—Sexual Favoritism—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there sexual favoritism in the work environment?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the sexual favoritism severe or pervasive?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

VF-2507A. Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of individual defendant*] an employee of [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Was [*name of plaintiff*] subjected to harassing conduct because [*he/she/nonbinary pronoun*] was [*protected status, e.g., a woman*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the harassment severe or pervasive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] consider the work environment to be

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021, November 2021, May 2022, May 2024

Directions for Use

This verdict form is based on CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Include optional question 2 only if optional element 2 is included in CACI No. 2522A.

Modify question 3 if the plaintiff was not actually a member of the protected class, but alleges harassment because the plaintiff was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2507B. Work Environment Harassment—Conduct Directed at Others—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of individual defendant*] an employee of [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Did [*name of plaintiff*] personally witness harassing conduct that took place in [*his/her/nonbinary pronoun*] immediate work environment?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the harassment severe or pervasive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021, November 2021, May 2022, May 2024

Directions for Use

This verdict form is based on CACI No. 2522B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Include optional question 2 only if optional element 2 is included in CACI No. 2522B.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2507C. Work Environment Harassment—Sexual Favoritism—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [2. Was [*name of individual defendant*] an employee of [*name of covered entity*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Was there sexual favoritism in the work environment?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the sexual favoritism severe or pervasive?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] consider the work environment to be

pain/mental suffering:]

\$_____]

TOTAL \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, December 2014, December 2016, May 2020, May 2021, November 2021, May 2022, May 2024

Directions for Use

This verdict form is based on CACI No. 2522C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Include optional question 2 only if optional element 2 is included in CACI No. 2522C.

Depending on the facts of the case, other factual scenarios for employer liability can be substituted in question 7, as in element 7 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2508. Disability Discrimination—Disparate Treatment

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* **[know that *[name of plaintiff]* had/treat *[name of plaintiff]* as if *[he/she/nonbinary pronoun]* had] [a history of having] [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* **able to perform the position's essential job duties without an accommodation?**

_____ Yes _____ No

If your answer to question 4 is yes, then skip question 5 and answer question 6. If you answered no, then answer question 5.

5. Was *[name of plaintiff]* **able to perform the position's essential job duties with reasonable accommodation for *[his/her/nonbinary pronoun]* [e.g., condition]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **[discharge/refuse to hire/*[other adverse***

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2007, December 2009, June 2010, December 2010, June 2013, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 2540, *Disability Discrimination—Disparate Treatment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2540. Depending on the facts of the case, other factual scenarios can be substituted in questions 3 and 7, as in elements 3 and 6 of the instruction.

For question 3, select the claimed basis of discrimination: an actual disability, a history of a disability, a perceived disability, or a perceived history of a disability. For an actual disability, select “know that [*name of plaintiff*] had.” For a perceived disability, select “treat [*name of plaintiff*] as if [*he/she/nonbinary pronoun*] had.”

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual

VF-2508

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2509. Disability Discrimination—Reasonable Accommodation
(Gov. Code, § 12940(m))**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/[other covered entity]]**?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/[other covered relationship to defendant]]**?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did *[name of plaintiff]* have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did *[name of defendant]* know of *[name of plaintiff]*'s *[e.g., physical condition]* [that limited *[insert major life activity]*]**?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for *[his/her/nonbinary pronoun]* *[e.g., physical condition]***?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2541, *Disability Discrimination—Reasonable Accommodation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (*l*) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2510. Disability Discrimination—Reasonable
Accommodation—Affirmative Defense—Undue Hardship (Gov.
Code, § 12940(m))**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/[other covered entity]]**?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]**?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* **have [a] [select term to describe basis of limitations, e.g., physical condition] [that limited [insert major life activity]]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* **know of [name of plaintiff]'s [e.g., physical condition] [that limited [insert major life activity]]**?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for [his/her/nonbinary pronoun] [e.g., physical condition]**?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* fail to provide reasonable accommodation for *[name of plaintiff]*'s *[e.g., physical condition]*?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would *[name of plaintiff]*'s proposed accommodations have created an undue hardship to the operation of *[name of defendant]*'s business?

_____ Yes _____ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was *[name of defendant]*'s failure to provide a reasonable accommodation a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical

pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2541, *Disability Discrimination—Reasonable Accommodation—Essential Factual Elements*, and CACI No. 2545, *Disability Discrimination—Affirmative Defense—Undue Hardship*. If a different affirmative defense is at issue, this form should be tailored accordingly.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (*l*) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2511. Religious Creed Discrimination—Failure to Accommodate (Gov. Code, § 12940(I))

We answer the questions submitted to us as follows:

1. Was [*name of defendant*] [an employer/[*other covered entity*]]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] [an employee of [*name of defendant*]/an applicant to [*name of defendant*] for a job/[*other covered relationship to defendant*]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does [*name of plaintiff*] have a sincerely held religious belief that [*describe religious belief, observance, or practice*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*]'s religious [belief/observance] conflict with a job requirement?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] know of the conflict between [*name of plaintiff*]'s religious [belief/observance] and the job requirement?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of defendant*] reasonably accommodate [*name of plaintiff*]'s religious [belief/observance]?

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]
TOTAL \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2512. Religious Creed Discrimination—Failure to Accommodate—Affirmative Defense—Undue Hardship (Gov. Code, §§ 12926(u), 12940(l))

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?
_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does *[name of plaintiff]* **have a sincerely held religious belief that *[describe religious belief, observance, or practice]*?**
_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]*'s religious **[belief/observance] conflict with a job requirement?**
_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* **know of the conflict between *[name of plaintiff]*'s religious [belief/observance] and the job requirement?**
_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* **reasonably accommodate *[name of***

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2012, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements* (see Gov. Code, §§ 12926(u), 12940(l)) and CACI No. 2561, *Religious Creed Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 11 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual

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forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2513. Disability Discrimination—Reasonable
Accommodation—Failure to Engage in Interactive Process (Gov.
Code, § 12940(n))**

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* have **[a]** *[select term to describe basis of limitations, e.g., physical condition]* **[that limited *[insert major life activity]*]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* request that *[name of defendant]* make **reasonable accommodation for *[his/her/nonbinary pronoun]* [e.g., physical condition]** so that *[he/she/nonbinary pronoun]* would be able to perform the essential job requirements?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]* willing to participate in an interactive process to determine whether reasonable accommodation could be made so that *[he/she/nonbinary pronoun]* would be able to perform the essential job requirements?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* fail to participate in a timely, good-faith interactive process with *[name of plaintiff]* to determine whether reasonable accommodation could be made?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [7. Could *[name of defendant]* have made a reasonable accommodation when the interactive process should have taken place?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

8. Was *[name of defendant]*'s failure to participate in a good-faith interactive process a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New April 2009; Revised December 2009, December 2010, December 2016, May 2022, May 2024

Directions for Use

This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Bracketed question 7 reflects that there is a split of authority as to whether the employee must also prove that a reasonable accommodation was available. (Compare *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 87 [273 Cal.Rptr.3d 312] [“the availability of a reasonable accommodation is an essential element of an interactive process claim”] and *Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings section 12940(n) claim bears burden of proving a reasonable accommodation was available before employer can be held

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liable under the statute] with *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1] [jury’s finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] and *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 243 [35 Cal.Rptr.3d 837]; see *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018–1019 [93 Cal.Rptr.3d 338] [attempting to reconcile conflict].)

Do not include the transitional language following question 8 and question 9 if the only damages claimed are also claimed under Government Code section 12940(m) on reasonable accommodation. Use CACI No. VF-2509, *Disability Discrimination—Reasonable Accommodation*, or CACI No. VF-2510, *Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*, to claim these damages.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

TOTAL \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New June 2010; Revised December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2527, *Failure to Prevent Harassment, Discrimination, or Retaliation—Essential Factual Elements—Employer or Entity Defendant*. These questions should be added to the verdict form that addresses the underlying claim of discrimination, retaliation, or harassment if the plaintiff also asserts a separate claim against the employer for failure to prevent the underlying conduct. The jury should not reach these questions unless it finds that the underlying claim is proved.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2515. Limitation on Remedies—Same Decision

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an **employer**/*[other covered entity]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* **an employee of** *[name of defendant]*/**an applicant to** *[name of defendant]* **for a job**/*[other covered relationship to defendant]*?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* **discharge/refuse to hire**/*[other adverse employment action]* *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[protected status or activity]* **a substantial motivating reason for** *[name of defendant]*'s **discharge of/refusal to hire**/*[other adverse employment action]* *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[specify employer's stated legitimate reason, e.g., plaintiff's poor job performance]* **also a substantial motivating reason for** *[name of defendant]*'s **discharge/refusal to hire**/*[other adverse employment action]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Would *[name of defendant]* have **discharged/refused to hire**/*[other*

adverse employment action] [*name of plaintiff*] **anyway at that time based on [e.g., *plaintiff's poor job performance*] had [*name of defendant*] not also been substantially motivated by [discrimination/retaliation]?**

_____ Yes _____ No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [*name of defendant*]'s [discharge/refusal to hire/[*other adverse employment action*]] a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

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This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

2603. “Comparable Job” Explained

“Comparable job” means a job that is the same or close to the employee’s former job in responsibilities, duties, pay, benefits, working conditions, and schedule. It must be at the same location or a similar geographic location.

New September 2003; Revised May 2021

Directions for Use

Give this instruction only if comparable job is an issue under the plaintiff’s CFRA claim.

Sources and Authority

- Employment in a Comparable Position. Government Code section 12945.2(b)(6).
- Employment in a Comparable Position. Cal. Code Regs., tit. 2, § 11087(i).
- “[W]hile we will accord great weight and respect to the [Fair Employment and Housing Commission]’s regulations that apply to the necessity for leave, along with any applicable federal FMLA regulations that the Commission incorporated by reference, we still retain ultimate responsibility for construing [CFRA].” (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 994–995 [94 Cal.Rptr.2d 643].)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:1138–12:1139, 12:1150, 12:1154–12:1156 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, §§ 8.30, 8.31 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.32[6][k] (Matthew Bender)

VF-2600. Violation of CFRA Rights

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] eligible for family care or medical leave?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] [request/take] leave for the birth of [*his/her/nonbinary pronoun*] child or bonding with the child?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] provide reasonable notice to [*name of defendant*] of [*his/her/nonbinary pronoun*] need for [family care/medical] leave?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [refuse to grant [*name of plaintiff*]'s request for [family care/medical] leave] [refuse to return [*name of plaintiff*] to the same or a comparable job when [*his/her/nonbinary pronoun*] [family care/medical] leave ended] [*other violation of CFRA rights*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s [decision/conduct] a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?**[a. Past economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]**[b. Future economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

*New September 2003; Revised April 2007, December 2010, December 2016, May 2024***Directions for Use**This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

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If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2601. Violation of CFRA Rights—Affirmative
Defense—Employment Would Have Ceased**

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* *[request/take]* leave for the birth of *[his/her/nonbinary pronoun]* child or bonding with the child?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* provide reasonable notice to *[name of defendant]* of *[his/her/nonbinary pronoun]* need for *[family care/medical]* leave?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* refuse to return *[name of plaintiff]* to the same or to a comparable job when *[his/her/nonbinary pronoun]* *[family care/medical]* leave ended?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would *[name of defendant]* have *[discharged/laid off]* *[name of plaintiff]* if *[he/she/nonbinary pronoun]* had continued to work during the leave period?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

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Directions for Use

This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*, and CACI No. 2612, *Affirmative Defense—Employment Would Have Ceased*. If a different affirmative defense is at issue, this form should be tailored accordingly.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2602. CFRA Rights Retaliation

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] eligible for family care or medical leave?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] [[request/take] [family care/medical] leave/[*other protected activity*]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] [discharge/[*other adverse employment action*]] [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of plaintiff*]'s [[request for/taking] [family care/medical] leave/[*other protected activity*]] a substantial motivating reason for [*name of defendant*]'s decision to [discharge/[*other adverse employment action*]]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]'s retaliatory conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

- [a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including

[physical pain/mental suffering:]	\$_____]
--------------------------------------	----------

[d. Future noneconomic loss, including

[physical pain/mental suffering:]	\$_____]
--------------------------------------	----------

TOTAL \$_____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2620, *CFRA Rights Retaliation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages,

VF-2602

especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

2743. Equal Pay Act—Retaliation—Essential Factual Elements (Lab. Code, § 1197.5(k))

[Name of plaintiff] **claims that** *[name of defendant]* **retaliated against** **[him/her/nonbinary pronoun]** **for** **[pursuing/assisting another in the enforcement of]** **[his/her/nonbinary pronoun]** **right to equal pay regardless of** **[sex/race/ethnicity]**. **To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

1. **That** *[name of plaintiff]* **[specify acts taken by plaintiff to invoke, enforce, or assist in the enforcement of the right to equal pay];**
2. **That** *[name of defendant]* **[discharged/[other adverse employment action]]** *[name of plaintiff];*
3. **That** *[name of plaintiff]*'s **[pursuit of/assisting in the enforcement of another's right to] equal pay was a substantial motivating reason for** *[name of defendant]*'s **[discharging/[other adverse employment action]]** *[name of plaintiff];*
4. **That** *[name of plaintiff]* **was harmed; and**
5. **That** *[name of defendant]*'s **retaliatory conduct was a substantial factor in causing** *[name of plaintiff]*'s **harm.**

New May 2018; Revised May 2020, May 2024

Directions for Use

Use this instruction in cases of alleged retaliation against an employee under the Equal Pay Act. The Act prohibits adverse employment actions against an employee who has invoked the protections of or taken steps to enforce it. (Lab. Code, § 1197.5(k)(1) [protecting the right of employees to invoke the protections of the Act, assist in enforcement of the Act, disclose their wages, discuss the wages of others, inquire about another employee's wages, or encourage other employees to exercise their rights under the Act].) Modify the instruction as necessary to describe the employee's protected activity in the first sentence. An employee who has been retaliated against may bring a civil action for reinstatement, reimbursement for lost wages and work benefits, interest, and equitable relief. (Lab. Code, § 1197.5(k)(2).)

Note that there are two causation elements. First, there must be a causal connection between the employee's protected activity and the adverse employment action (element 3). Second, the employee must have suffered harm because of the employer's retaliatory acts (element 5).

Element 3 uses the term "substantial motivating reason" to express both intent and causation between the employee's protected activity and the adverse employment action. "Substantial motivating reason" has been held to be the appropriate standard

CACI No. 2743

under the discrimination prohibitions of the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason*” Explained.) Whether this standard applies to the Equal Pay Act retaliation cases has not been addressed by the courts.

If an employer takes adverse action within 90 days of an employee’s exercise of rights protected by the Equal Pay Act, there is a rebuttable presumption in favor of the employee’s claim. (Lab. Code, § 1197.5(k)(1).) Consider modifying this instruction and/or giving additional instructions regarding the rebuttable presumption.

Sources and Authority

- Retaliation Prohibited Under Equal Pay Act. Labor Code section 1197.5(k).
- Rebuttable Presumption in Favor of Employee’s Claim. Labor Code section 1197.5(k)(1).

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 430

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-G, *Compensation—Wage Discrimination*, ¶ 11:1077.20 (The Rutter Group)

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.02 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14[b] (Matthew Bender)

VF-2700. Nonpayment of Wages (Lab. Code, §§ 201, 202, 218)

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] perform work for [name of defendant]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Does [name of defendant] owe [name of plaintiff] wages under the terms of the employment?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What is the amount of unpaid wages? \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2005, December 2010, December 2016, November 2023, May 2024*

Directions for Use

This verdict form is based on CACI No. 2700, *Nonpayment of Wages—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form may be augmented for the jury to make any factual findings that are required for the court to calculate the amount of prejudgment interest due for nonpayment of wages. (Lab. Code, § 218.6.)

VF-2701. Nonpayment of Minimum Wage (Lab. Code, § 1194)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] perform work for [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] paid less than the minimum wage by [*name of defendant*] for some or all hours worked?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. How many hours was [*name of plaintiff*] paid less than the minimum wage?

_____ hours

4. What is the amount of wages owed? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, December 2010, December 2016, November 2023, May 2024*

Directions for Use

This verdict form is based on CACI No. 2701, *Nonpayment of Minimum Wage—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form may be augmented for the jury to make any factual findings that are required for the court to calculate the amount of prejudgment interest due for nonpayment of wages. (Lab. Code, § 218.6.)

**VF-2702. Nonpayment of Overtime Compensation (Lab. Code,
§ 1194)**

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] perform work for [name of defendant]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of plaintiff] work overtime hours?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of defendant] know, or should [name of defendant] have known, that [name of plaintiff] had worked overtime hours?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of plaintiff] paid at a rate lower than the legal overtime compensation rate for any overtime hours that [he/she/ nonbinary pronoun] worked for [name of defendant]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What is the amount of wages owed? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, June 2015, December 2016, November 2023, May 2024*

Directions for Use

This verdict form is based on CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form may be augmented for the jury to make any factual findings that are required for the court to calculate the amount of prejudgment interest due for nonpayment of wages. (Lab. Code, § 218.6.)

VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218)

We answer the questions submitted to us as follows:

- 1. Did [name of plaintiff] perform work for [name of defendant]?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of defendant] discharge [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] willfully fail to [pay/tender payment of] the full amount of wages earned by [name of plaintiff] on [his/her/ nonbinary pronoun] last day of employment?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. For how many calendar days following [name of plaintiff]’s last day of employment did [name of defendant] willfully fail to [pay/ tender payment of] the full amount of [name of plaintiff]’s wages? _____ days.**

Answer question 5.

- 5. What was [name of plaintiff]’s daily wage rate at the time [his/her/ nonbinary pronoun] employment ended? \$_____ per day.**

**Signed: _____
 Presiding Juror**

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2704, *Damages—Waiting-Time Penalty for Nonpayment of Wages*. Depending on the facts of the case, other factual scenarios can be substituted in questions 2, 3, and 4, as in elements 2, 3, and 4 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2704. Solicitation of Employee by Misrepresentation (Lab.
Code, § 970)**

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] make [a] representation(s) to [name of plaintiff] about the kind, character, or existence of work?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. [Was/Were] [name of defendant]'s representation(s) untrue?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] know the representation(s) [was/were] untrue when made?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of defendant] intend that [name of plaintiff] rely on the representation(s)?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did [name of plaintiff] reasonably rely on [name of defendant]'s representation(s) and move or change [his/her/nonbinary pronoun] residence for the purpose of working for [name of defendant]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 6. Was [name of plaintiff]'s reliance on [name of defendant]'s representation(s) a substantial factor in causing harm to [name of**

VF-2704

Misrepresentation—Essential Factual Elements. Depending on the facts of the case, other factual scenarios can be substituted in question 1, as in element 1 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2705. Preventing Subsequent Employment by
Misrepresentation (Lab. Code, § 1050)**

We answer the questions submitted to us as follows:

1. After *[name of plaintiff]*'s employment with *[name of defendant]* ended, did *[name of defendant]* make **[a] representation(s)** to *[name of prospective employer]* about *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Was/Were]** *[name of defendant]*'s representation(s) untrue?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know the representation(s) **[was/were]** untrue when **[he/she/nonbinary pronoun/it]** made **[it/them]**?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* make the representation(s) with the intent of preventing *[name of plaintiff]* from obtaining employment?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2706. Rest Break Violations (Lab. Code, § 226.7)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] work for [*name of defendant*] on one or more workdays for at least three and one-half hours?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] prove at least one rest break violation?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. On how many workdays did one or more rest break violations occur?

_____ workdays

Answer question 4.

4. What is the amount of pay owed? \$_____

Signed: _____
 Presiding Juror

Dated: _____

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

*New December 2022; Revised November 2023**

Directions for Use

This verdict form is based on CACI No. 2760, *Rest Break Violations—Introduction*, CACI No. 2761, *Rest Break Violations—Essential Factual Elements*, and CACI No. 2762, *Rest Break Violations—Pay Owed*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-

3920, *Damages on Multiple Legal Theories*.

The court may determine if prejudgment interest is awardable and, if so, whether it is discretionary or mandatory. (Civ. Code, §§ 3287, 3288.) If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may be augmented for the jury to make any factual findings that are required to calculate the amount of prejudgment interest.

VF-2707. Meal Break Violations (Lab. Code, §§ 226.7, 512)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] work for [*name of defendant*] for one or more workdays for a period lasting longer than five hours?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] prove at least one meal break violation?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. On how many workdays did one or more meal break violations occur?

_____ workdays

Answer question 4.

4. What is the amount of pay owed? \$_____

Signed: _____
 Presiding Juror

Dated: _____

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2022; Revised November 2023, May 2024*

Directions for Use

This verdict form is based on CACI No. 2765, *Meal Break Violations—Introduction*, CACI No. 2766A, *Meal Break Violations—Essential Factual Elements*, and CACI No. 2767, *Meal Break Violations—Pay Owed*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-

3920, *Damages on Multiple Legal Theories*.

The court may determine if prejudgment interest is awardable and, if so, whether it is discretionary or mandatory. (Civ. Code, §§ 3287, 3288.) If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may be augmented for the jury to make any factual findings that are required to calculate the amount of prejudgment interest.

VF-2708. Meal Break Violations—Employer Records Showing Noncompliance (Lab. Code, §§ 226.7, 512)

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] work for [*name of defendant*] for one or more workdays for a period lasting longer than five hours?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Do [*name of defendant*]’s records show any missed meal breaks, meal breaks of less than 30 minutes, or meal breaks taken too late in a workday?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. How many meal breaks do the records show as missed, less than 30 minutes, or taken too late in a workday?

_____ meal breaks

Answer question 4.

4. For each meal break included in your answer to question 3, did [*name of defendant*] prove [*he/she/nonbinary pronoun/it*] provided a meal break that complies with the law?

_____ Yes _____ No

If your answer to question 4 is yes, stop here, answer no further questions, and have the presiding juror sign and date this form. If you answered no, then answer question 5.

5. Considering by workday the meal breaks determined in question 3, for how many workdays did [*name of defendant*] fail to prove that [*he/she/nonbinary pronoun/it*] provided meal breaks that comply with the law?

_____ workdays

Answer question 6.

6. For the workdays determined in question 5, what is the amount of pay owed?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New May 2023; Revised November 2023, May 2024

Directions for Use

This verdict form is based on CACI No. 2765, *Meal Break Violations—Introduction*, and CACI No. 2766B, *Meal Break Violations—Rebuttable Presumption—Employer Records*. Use this verdict form if the plaintiff’s meal break claims involve the rebuttable presumption of a violation based on an employer’s records showing missed meal breaks, meal breaks of less than 30 minutes, or meal breaks taken too late in a workday. See also verdict form CACI No. VF-2707, *Meal Break Violations*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

The court may determine if prejudgment interest is awardable and, if so, whether it is discretionary or mandatory. (Civ. Code, §§ 3287, 3288.) If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may be augmented for the jury to make any factual findings that are required to calculate the amount of prejudgment interest.

VF-2709. Meal Break Violations—Inaccurate or Missing Employer Records (Lab. Code, §§ 226.7, 512)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* work for *[name of defendant]* for one or more workdays for a period lasting longer than five hours?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* keep *[accurate]* records of the start and end times for meal breaks?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. For how many meal breaks were *[accurate]* records of the start and end times for meal breaks not kept?

_____ meal breaks

Answer question 4.

4. For each meal break included in your answer to question 3, did *[name of defendant]* prove *[he/she/nonbinary pronoun/it]* provided a meal break that complies with the law?

_____ Yes _____ No

If your answer to question 4 is yes, stop here, answer no further questions, and have the presiding juror sign and date this form. If you answered no, then answer question 5.

5. Considering by workday the meal breaks determined in question 3, for how many workdays did *[name of defendant]* fail to prove that *[he/she/nonbinary pronoun/it]* provided meal breaks that comply with the law?

_____ workdays

Answer question 6.

6. For the workdays determined in question 5, what is the amount of pay owed?

\$ _____

Signed: _____
Presiding Juror

Dated: _____

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New May 2023; Revised November 2023, May 2024

Directions for Use

This verdict form is based on CACI No. 2765, *Meal Break Violations—Introduction*, and CACI No. 2766B, *Meal Break Violations—Rebuttable Presumption—Employer Records*. Use this verdict form if the plaintiff’s meal break claims involve the rebuttable presumption of a violation based on an employer’s inaccurate or missing records. If only missing records are at issue, omit “accurate” from questions 2 and 3. See also verdict form CACI No. VF-2707, *Meal Break Violations*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

The court may determine if prejudgment interest is awardable and, if so, whether it is discretionary or mandatory. (Civ. Code, §§ 3287, 3288.) If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may be augmented for the jury to make any factual findings that are required to calculate the amount of prejudgment interest.

- [c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]
- [d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]
- TOTAL \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2801, *Employer's Willful Physical Assault—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff alleges that defendant engaged in conduct other than that which is described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2801.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____**

Answer question 6.

6. What are the damages that [name of plaintiff/decendent] would have sustained if [name of defendant] had not concealed the injury?**[a. Past economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]**[b. Future economic loss**

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____**

Answer question 7.

- 7. Subtract the total amount in question 6 from the total amount in question 5. This is the amount [name of plaintiff] is entitled to recover. \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2802, *Fraudulent Concealment of Injury—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in questions 5 and 6, and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	
[b. Future economic loss	
[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____	

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2803, *Employer’s Defective Product—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2803. Removal or Noninstallation of Power Press Guards (Lab. Code, § 4558)

We answer the questions submitted to us as follows:

- 1. Was [name of defendant] [name of plaintiff]’s [employer/supervisor]?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Was [name of plaintiff] injured while operating a power press?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] give an affirmative instruction to [remove/not install] the guards before [name of plaintiff]’s injury?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. When [name of defendant] did so, did [he/she/nonbinary pronoun/it] actually know that the lack of guards would create a probability of serious injury or death?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Did the power press’s [designer/fabricator/assembler] [design the press with guards/install guards on the press/require guards be attached/specify that guards be attached] and directly or indirectly convey this information to [name of defendant]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 2804, *Removal or Noninstallation of Power Press Guards—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant]

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2811, *Co-Employee’s Willful and Unprovoked Physical Act of Aggression—Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff alleges that the defendant engaged in conduct other than that described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2811.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award

prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 2812, *Injury Caused by Co-Employee's Intoxication—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual

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findings that are required in order to calculate the amount of prejudgment interest.

VF-2900. FELA—Negligence—Plaintiff’s Negligence at Issue

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*’s job duties further, or in any way substantially affect, interstate commerce?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her/nonbinary pronoun]* employment at the time of the incident?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]* negligent?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of plaintiff] harmed?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s negligence a cause of [name of plaintiff/decendent]'s [harm/death]?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s total damages? Do not reduce the damages based on the fault, if any, of [name of plaintiff/decendent].

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]

Total Future Economic Damages: \$_____]

[c. Past loss, including [physical pain/mental suffering:] \$_____]

[d. Future loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

If [name of plaintiff] has proved any damages, then answer question 10. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

10. Was [name of plaintiff/decedent] negligent?

_____ Yes _____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. Was [name of plaintiff/decedent]’s negligence a cause of [his/her/ nonbinary pronoun] harm?

_____ Yes _____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

12. What percentage of responsibility for [name of plaintiff]’s harm do you assign to:

[Name of defendant]: _____%

[Name of plaintiff/decedent]: _____%

TOTAL: 100 %

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This form is based on CACI No. 2900, *FELA—Essential Factual Elements*, and CACI No. 2904, *Comparative Fault*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-

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3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2901. Federal Safety Appliance Act or Boiler Inspection Act

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*'s job duties further, or in any way substantially affect, interstate commerce?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her/nonbinary pronoun]* employment at the time of the incident?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* *[describe violation of Federal Safety Appliance Act/Boiler Inspection Act]*?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This form is based on CACI No. 2920, *Essential Factual Elements—Federal Safety Appliance Act or Boiler Inspection Act*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

3060. Unruh Civil Rights Act—Essential Factual Elements (Civ. Code, §§ 51, 52)

[Name of plaintiff] **claims that** *[name of defendant]* **denied** *[him/her/nonbinary pronoun]* **full and equal** *[accommodations/advantages/facilities/privileges/services]* **because of** *[his/her/nonbinary pronoun]* *[sex/race/color/religion/ancestry/ national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]]*. **To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

- 1. That** *[name of defendant]* **[denied/aided or incited a denial of/discriminated or made a distinction that denied] full and equal** *[accommodations/advantages/facilities/privileges/services]* **to** *[name of plaintiff]*;
- 2. [That a substantial motivating reason for** *[name of defendant]*'s **conduct was** *[its perception of]* *[name of plaintiff]*'s *[sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]]*;
[That the *[sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]]* **of a person whom** *[name of plaintiff]* **was associated with was a substantial motivating reason for** *[name of defendant]*'s **conduct;]**
- 3. That** *[name of plaintiff]* **was harmed; and**
- 4. That** *[name of defendant]*'s **conduct was a substantial factor in causing** *[name of plaintiff]*'s **harm.**

New September 2003; Revised December 2011, June 2012; Renumbered from CACI No. 3020 December 2012; Revised June 2013, June 2016

Directions for Use

Select the bracketed option from element 2 that is most appropriate to the facts of the case.

Note that element 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s conduct. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of

both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason*” Explained.) Whether the FEHA standard applies under the Unruh Civil Rights Act has not been addressed by the courts.

With the exception of claims that are also violations of the Americans With Disabilities Act (ADA) (see *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 665 [94 Cal.Rptr.3d 685, 208 P.3d 623]), intentional discrimination is required for violations of the Unruh Civil Rights Act. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1149 [278 Cal.Rptr. 614, 805 P.2d 873].) The intent requirement is encompassed within the motivating-reason element. For claims that are also violations of the ADA, do not give element 2.

Note that there are two causation elements. There must be a causal link between the discriminatory intent and the adverse action (see element 2), and there must be a causal link between the adverse action and the harm (see element 4).

For an instruction on damages under the Unruh Civil Rights Act, see CACI No. 3067, *Unruh Civil Rights Act—Damages*. Note that the jury may award a successful plaintiff up to three times actual damages but not less than \$4,000 regardless of any actual damages. (Civ. Code, § 52(a).) In this regard, harm is presumed, and elements 3 and 4 may be considered as established if no actual damages are sought. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Unruh Civil Rights Act violations are per se injurious]; Civ. Code, § 52(a) [provides for minimum statutory damages for every violation regardless of the plaintiff’s actual damages]; see also Civ. Code, § 52(h) [“actual damages” means special and general damages].)

The judge may decide the issue of whether the defendant is a business establishment as a matter of law. (*Rotary Club of Duarte v. Bd. of Directors* (1986) 178 Cal.App.3d 1035, 1050 [224 Cal.Rptr. 213].) Special interrogatories may be needed if there are factual issues. This element has been omitted from the instruction because it is unlikely to go to a jury.

The Act is not limited to the categories expressly mentioned in the statute. Other forms of arbitrary discrimination by business establishments are prohibited. (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736 [180 Cal.Rptr. 496, 640 P.2d 115].) Therefore, this instruction allows the user to “*insert other actionable characteristic*” throughout. Nevertheless, there are limitations on expansion beyond the statutory classifications. First, the claim must be based on a personal characteristic similar to those listed in the statute. Second, the court must consider whether the alleged discrimination was justified by a legitimate business reason. Third, the consequences of allowing the claim to proceed must be taken into account. (*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1392–1393 [127 Cal.Rptr.3d 794]; see *Harris, supra*, 52 Cal.3d at pp. 1159–1162.) However, these issues are most likely to be resolved by the court rather than the jury. (See *Harris, supra*, 52 Cal.3d at p. 1165.) Therefore, no elements are included to address what may be an “other actionable characteristic.” If there are contested factual issues, additional

instructions or special interrogatories may be necessary.

Sources and Authority

- Unruh Civil Rights Act. Civil Code section 51.
- Remedies Under Unruh Civil Rights Act. Civil Code section 52.
- “The Unruh Act was enacted to ‘create and preserve a nondiscriminatory environment in California business establishments by “banishing” or “eradicating” arbitrary, invidious discrimination by such establishments.’ ” (*Flowers v. Prasad* (2015) 238 Cal.App.4th 930, 937 [190 Cal.Rptr.3d 33].)
- “Invidious discrimination is the treatment of individuals in a manner that is malicious, hostile, or damaging.” (*Javorsky v. Western Athletic Clubs, Inc.* (2015) 242 Cal.App.4th 1386, 1404 [195 Cal.Rptr.3d 706].)
- “A plaintiff can recover under the Unruh Civil Rights Act on two alternate theories: (1) a violation of the ADA [citation]; or (2) denial of access to a business establishment based on intentional discrimination.” (*Martin v. Thi E-Commerce, LLC* (2023) 95 Cal.App.5th 521, 527 [313 Cal.Rptr.3d 488].)
- “To state a claim under the Unruh Civil Rights Act, a plaintiff must allege the defendant is a business establishment that intentionally discriminates against and/or denies plaintiff full and equal treatment of a service, advantage, or accommodation based on plaintiff’s protected status.” (*Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 922 [313 Cal.Rptr.3d 330].)
- “A person who aids and abets the commission of an offense, such as an intentional tort, may be liable if the person ‘ “knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act” ’ or ‘ “gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” ’ A person can be liable for aiding and abetting violations of civil rights laws.” (*Liapes, supra*, 95 Cal.App.5th at p. 926, internal citations omitted.)
- “ ‘The Legislature used the words “all” and “of every kind whatsoever” in referring to business establishments covered by the Unruh Act, and the inclusion of these words without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term “business establishments” was used in the broadest sense reasonably possible. The word “business” embraces everything about which one can be employed, and it is often synonymous with “calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain.” The word “establishment,” as broadly defined, includes not only a fixed location, such as the “place where one is permanently fixed for residence or business,” but also a permanent “commercial force or organization” or “a permanent settled position, (as in life or business).” ’ ” (*O’Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, 795 [191 Cal.Rptr. 320, 662 P.2d 427], internal citations omitted.)
- “[W]e proceed to decide whether [defendant] is a business establishment. The

resolution of this issue is one of law.” (*Rotary Club of Duarte, supra*, 178 Cal.App.3d at p. 1050.)

- “When a plaintiff has visited a business’s website with intent to use its services and alleges that the business’s terms and conditions exclude him or her from full and equal access to its services, the plaintiff need not enter into an agreement with the business to establish standing under the Unruh Civil Rights Act. In general, a person suffers discrimination under the Act when the person presents himself or herself to a business with an intent to use its services but encounters an exclusionary policy or practice that prevents him or her from using those services. We conclude that this rule applies to online businesses and that visiting a website with intent to use its services is, for purposes of standing, equivalent to presenting oneself for services at a brick-and-mortar store. Although mere awareness of a business’s discriminatory policy or practice is not enough for standing under the Act, entering into an agreement with the business is not required.” (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1023 [250 Cal.Rptr.3d 770, 446 P.3d 276].)
- “We hold that including websites connected to a physical place of public accommodation is not only consistent with the plain language of Title III, but it is also consistent with Congress’s mandate that the ADA keep pace with changing technology to effectuate the intent of the statute.” (*Thurston v. Midvale Corp.* (2019) 39 Cal.App.5th 634, 644 [252 Cal.Rptr.3d 292].)
- “As to intentional discrimination, the California Supreme Court has held that the discriminatory effect of a facially neutral policy or action is not alone a basis for inferring intentional discrimination under the Unruh Civil Rights Act. It follows that we cannot infer intentional discrimination from [plaintiff’s] alleged facts that he made [defendant] aware of the discriminatory effect of [defendant’s] facially neutral website, and that [defendant] did not ameliorate these effects.” (*Martinez v. Cot’n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1032 [297 Cal.Rptr.3d 712], internal citation omitted.)
- “Beyond the pleading stage, if a plaintiff wants to prevail on an Unruh Civil Rights Act claim, he or she must present sufficient evidence to overcome the online defendant’s argument that he or she ‘did not actually possess a *bona fide intent* to sign up for or use its services.’” (*Thurston v. Omni Hotels Management Corp.* (2021) 69 Cal.App.5th 299, 307 [284 Cal.Rptr.3d 341], internal citation omitted, original italics.)
- “Here, the City was not acting as a business establishment. It was amending an already existing municipal code section to increase the minimum age of a responsible person from the age of 21 years to 30. The City was not directly discriminating against anyone and nothing in the plain language of the Unruh Civil Rights Act makes its provisions applicable to the actions taken by the City.” (*Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 175 [196 Cal.Rptr.3d 267].)
- “[T]he protection against discrimination afforded by the Unruh Act applies to ‘all

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persons,’ and is not reserved for restricted categories of prohibited discrimination.” (*Marina Point, Ltd., supra*, 30 Cal.3d at p. 736.)

- “Nevertheless, the enumerated categories, bearing the ‘common element’ of being ‘personal’ characteristics of an individual, necessarily confine the Act’s reach to forms of discrimination based on characteristics similar to the statutory classifications—such as ‘a person’s geographical origin, physical attributes, and personal beliefs.’ The ‘personal characteristics’ protected by the Act are not defined by ‘immutability, since some are, while others are not [immutable], but that they represent traits, conditions, decisions, or choices fundamental to a person’s identity, beliefs and self-definition.’ ” (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1145 [228 Cal.Rptr.3d 336].)
- “In addition to the particular forms of discrimination specifically outlawed by the Act (sex, race, color, etc.), courts have held the Act ‘prohibit[s] discrimination based on several classifications which are not specifically enumerated in the statute.’ These judicially recognized classifications include unconventional dress or physical appearance, families with children, homosexuality, and persons under 18.” (*Hessians Motorcycle Club v. J.C. Flanagans* (2001) 86 Cal.App.4th 833, 836 [103 Cal.Rptr.2d 552], internal citations omitted.)
- “The Act applies not merely in situations where businesses exclude individuals altogether, but also ‘where unequal treatment is the result of a business practice.’ ‘Unequal treatment includes offering price discounts on an arbitrary basis to certain classes of individuals.’ ” (*Candelore, supra*, 19 Cal.App.5th at pp. 1145–1146, internal citations omitted.)
- “Race discrimination claims under . . . the Unruh Civil Rights Act follow the analytical framework established under federal employment law. Although coaches are different from ‘ordinary employers,’ the *McDonnell Douglas* framework strikes the appropriate balance in evaluating race discrimination claims brought by college athletes: . . .” (*Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 661 [242 Cal.Rptr.3d 757], internal citations omitted.)
- “[T]he language and history of the Unruh Act indicate that the legislative object was to prohibit intentional discrimination in access to public accommodations. We have been directed to no authority, nor have we located any, that would justify extension of a disparate impact test, which has been developed and applied by the federal courts primarily in employment discrimination cases, to a general discrimination-in-public-accommodations statute like the Unruh Act. Although evidence of adverse impact on a particular group of persons may have probative value in public accommodations cases and should therefore be admitted in appropriate cases subject to the general rules of evidence, a plaintiff must nonetheless plead and prove a case of intentional discrimination to recover under the Act.” (*Harris, supra*, 52 Cal.3d at p. 1149.)
- “On examining the language, statutory context, and history of section 51, subdivision (f), we conclude . . . [t]he Legislature’s intent in adding subdivision

- (f) was to provide disabled Californians injured by violations of the ADA with the remedies provided by section 52. A plaintiff who establishes a violation of the ADA, therefore, need not prove intentional discrimination in order to obtain damages under section 52.” (*Munson, supra*, 46 Cal.4th at p. 665.)
- “Civil Code section 51, subdivision (f) states: ‘A violation of the right of any individual under the federal [ADA] shall also constitute a violation of this section.’ The ADA provides in pertinent part: ‘No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who . . . operates a place of public accommodation.’ The ADA defines discrimination as ‘a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.’ ” (*Baughman v. Walt Disney World Co.* (2013) 217 Cal.App.4th 1438, 1446 [159 Cal.Rptr.3d 825], internal citations omitted.)
 - “ ‘Although the Unruh Act proscribes “any form of arbitrary discrimination,” certain types of discrimination have been denominated “reasonable” and, therefore, not arbitrary.’ Thus, for example, ‘legitimate business interests may justify limitations on consumer access to public accommodations.’ ” (*Hankins v. El Torito Restaurants, Inc.* (1998) 63 Cal.App.4th 510, 520 [74 Cal.Rptr.2d 684], internal citations omitted.)
 - “Discrimination may be reasonable, and not arbitrary, in light of the nature of the enterprise or its facilities, legitimate business interests (maintaining order, complying with legal requirements, and protecting business reputation or investment), and public policy supporting the disparate treatment.” (*Javorsky, supra*, 242 Cal.App.4th at p. 1395.)
 - “[T]he Act’s objective of prohibiting ‘unreasonable, arbitrary or invidious discrimination’ is fulfilled by examining whether a price differential reflects an ‘arbitrary, class-based generalization.’ . . . [A] policy treating age groups differently in this respect may be upheld, at least if the pricing policy (1) ostensibly provides a social benefit to the recipient group; (2) the recipient group is disadvantaged economically when compared to other groups paying full price; and (3) there is no invidious discrimination.” (*Javorsky, supra*, 242 Cal.App.4th at p. 1399.)
 - “Unruh Act issues have often been decided as questions of law on demurrer or summary judgment when the policy or practice of a business establishment is valid on its face because it bears a reasonable relation to commercial objectives appropriate to an enterprise serving the public.” (*Harris, supra*, 52 Cal.3d at p. 1165, internal citations omitted.)
 - “It is thus manifested by section 51 that all persons are entitled to the full and

equal privilege of associating with others in any business establishment. And section 52, liberally interpreted, makes clear that discrimination by such a business establishment against one’s right of association on account of the associates’ color, is violative of the Act. It follows . . . that discrimination by a business establishment against persons on account of their association with others of the black race is actionable under the Act.” (*Winchell v. English* (1976) 62 Cal.App.3d 125, 129 [133 Cal.Rptr. 20].)

- “Appellant is disabled as a matter of law not only because she is HIV positive, but also because it is undisputed that respondent ‘regarded or treated’ her as a person with a disability. The protection of the Unruh Civil Rights Act extends both to people who are currently living with a physical disability that limits a life activity and to those who are regarded by others as living with such a disability. . . . ‘Both the policy and language of the statute offer protection to a person who is not actually disabled, but is wrongly perceived to be. The statute’s plain language leads to the conclusion that the “regarded as” definition casts a broader net and protects *any* individual “regarded” or “treated” by an employer “as having, or having had, any physical condition that makes achievement of a major life activity difficult” or may do so in the future.’ Thus, even an HIV-positive person who is outwardly asymptomatic is protected by the Unruh Civil Rights Act.” (*Maureen K. v. Tuschka* (2013) 215 Cal.App.4th 519, 529–530 [155 Cal.Rptr.3d 620], original italics, internal citations omitted.)
- “[T]he Unruh Civil Rights Act prohibits arbitrary discrimination in public accommodations with respect to trained service dogs, but not to service-animals-in-training.” (*Miller v. Fortune Commercial Corp.* (2017) 15 Cal.App.5th 214, 224 [223 Cal.Rptr.3d 133].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 994–1016

Chin et al., California Practice Guide: Employment Litigation, Ch.7-G, *Unruh Civil Rights Act*, ¶ 7:1525 et seq. (The Rutter Group)

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, §§ 116.10–116.16 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, § 35.20 et seq. (Matthew Bender)

3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)

[Name of plaintiff] **claims that** *[name of defendant]* **intentionally interfered with [or attempted to interfere with] [his/her/nonbinary pronoun] civil rights by threats, intimidation, or coercion. To establish this claim, [name of plaintiff] must prove all of the following:**

1. **[That by threats, intimidation or coercion, [name of defendant] caused [name of plaintiff] to reasonably believe that if [he/she/nonbinary pronoun] exercised [his/her/nonbinary pronoun] right [insert right, e.g., “to vote”], [name of defendant] would commit violence against [[him/her/nonbinary pronoun]/ [or] [his/her/nonbinary pronoun] property] and that [name of defendant] had the apparent ability to carry out the threats;]**

[or]

[That [name of defendant] acted violently against [[name of plaintiff]/ [and] [name of plaintiff]’s property] [to prevent [him/her/nonbinary pronoun] from exercising [his/her/nonbinary pronoun] right [e.g., to vote]/to retaliate against [name of plaintiff] for having exercised [his/her/nonbinary pronoun] right [e.g., to vote]];

2. **That [name of defendant] intended to deprive [name of plaintiff] of [his/her/nonbinary pronoun] enjoyment of the interests protected by the right [e.g., to vote];]**
3. **That [name of plaintiff] was harmed; and**
4. **That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.**

*New September 2003; Renumbered from CACI No. 3025 and Revised December 2012, November 2018, May 2024**

Directions for Use

Select the first option for element 1 if the defendant’s conduct involved threats of violence. (See Civ. Code, § 52.1(k).) Select the second option if the conduct involved actual violence.

The Bane Act provides that speech alone is not sufficient to constitute a violation unless it involves a credible threat of violence. (Civ. Code, § 52.1(k).) This limitation would appear to foreclose a claim based on threats, intimidation, or coercion involving a nonviolent consequence. (See *Cabesuela v. Browning-Ferris Industries* (1998) 68 Cal.App.4th 101, 111 [80 Cal.Rptr.2d 60] [to state a cause of action under Bane Act there must first be violence or intimidation by threat of violence].) No case has been found, however, that applies the speech limitation to

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foreclose a claim based on coercion without violence or a threat of violence, and several courts have suggested that this point is not fully settled. (See *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 959 [137 Cal.Rptr.3d 839] [we “need not decide that every plaintiff must allege violence or threats of violence in order to maintain an action under section 52.1”]; *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 408 [39 Cal.Rptr.3d 1] [also noting issue but finding it unnecessary to address].) To assert such a claim, modify element 1, option 1 to allege coercion based on a nonviolent threat with severe consequences.

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of \$4,000 for violations of Civil Code section 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither subsection of Section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the reference to section 52 in subsection (b) of the Bane Act would seem to indicate that damages may be recovered under both subsections (a) and (b) of section 52.

Under the Unruh Act, if only the statutory minimum damages of \$4,000 is sought, it is not necessary to prove harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Section 52 provides for minimum statutory damages for every violation of section 51, regardless of the plaintiff’s actual damages]; see also Civ. Code, § 52(h) [“actual damages” means special and general damages].) Presumably, the same rule applies under the Bane Act as the statutory minimum of section 52(a) should be recoverable. Therefore, omit elements 2 and 3 unless actual damages are sought. If actual damages are sought, combine CACI No. 3067, *Unruh Civil Rights Act—Damages*, and CACI No. 3068, *Ralph Act—Damages and Penalty*, to recover damages under both subsections (a) and (b) of section 52.

It has been the rule that in a wrongful detention case, the coercion required to support a Bane Act claim must be coercion independent from that inherent in the wrongful detention itself. (*Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 981 [159 Cal.Rptr.3d 204].) One court, however, did not apply this rule in a wrongful arrest case. The court instead held that the “threat, intimidation or coercion” element requires a specific intent to violate protected rights. (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 790–804 [225 Cal.Rptr.3d 356].) Element 2 expresses this requirement.

Sources and Authority

- Bane Act. Civil Code section 52.1.
- Remedies Under Bane Act. Civil Code section 52.
- “The Bane Act permits an individual to pursue a civil action for damages where another person ‘interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.’ ‘The essence of a Bane Act claim is that the defendant, by the specified

- improper means (i.e., “threat[], intimidation or coercion”), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.’ ” (*King v. State of California* (2015) 242 Cal.App.4th 265, 294 [195 Cal.Rptr.3d 286], internal citation omitted.)
- “[S]ection 52.1, was enacted a decade [after the Ralph Act] as part of Assembly Bill No. 63 (1987–1988 Reg. Sess.) (Assembly Bill No. 63) and is known as the Tom Bane Civil Rights Act. It was intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence. The stated purpose of the bill was ‘to fill in the gaps left by the Ralph Act’ by allowing an individual to seek relief to prevent the violence from occurring before it was committed and providing for the filing of criminal charges.” (*Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1447 [39 Cal.Rptr.3d 706], internal citation omitted.)
 - “The Legislature enacted section 52.1 to stem a tide of hate crimes.” (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 338 [70 Cal.Rptr.2d 844, 949 P.2d 941], internal citation omitted.)
 - “[T]o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence. Second, the violence or threatened violence must be due to plaintiff’s membership in one of the specified classifications set forth in Civil Code section 51.7 or a group similarly protected by constitution or statute from hate crimes.” (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1290 [217 Cal.Rptr.3d 275].)
 - “The plaintiff must show ‘the defendant interfered with or attempted to interfere with the plaintiff’s legal right by threatening or committing violent acts.’ ” (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395 [218 Cal.Rptr.3d 38].)
 - “However, the statutory language does not limit its application to hate crimes. Notably, the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff’s membership in a protected class of persons.” (*Shoyoye, supra*, 203 Cal.App.4th at p. 956.)
 - “The phrase ‘under color of law’ indicates, without doubt, that the Legislature intended to include law enforcement officers within the scope of Section 52.1 if the requisites of the statute are otherwise met.” (*Cornell, supra*, 17 Cal.App.5th at p. 800.)
 - “Civil Code section 52.1, the Bane Act civil counterpart of [Penal Code] section 422.6, recognizes a private right of action for damages and injunctive relief for interference with civil rights.” (*In re M.S.* (1995) 10 Cal.4th 698, 715 [42 Cal.Rptr.2d 355, 896 P.2d 1365].)
 - “[T]he Bane Act requires that the challenged conduct be intentional.” (*Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125 [212 Cal.Rptr.3d 884].)
 - “[S]ection 52.1 does require an attempted or completed act of interference with a

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legal right, accompanied by a form of coercion.” (*Jones, supra*, 17 Cal.4th at p. 334.)

- “The statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence.” (*Shoyoye, supra*, 203 Cal.App.4th at p. 958.)
- “ ‘[W]here coercion is inherent in the constitutional violation alleged, . . . the statutory requirement of “threats, intimidation, or coercion” is not met. The statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself.’ ” (*Simmons, supra*, 7 Cal.App.5th at p. 1126.)
- “The Legislature’s purpose suggests to us that the coercive nature of a tax—however exorbitant or unfair that tax may be—was not what the Legislature had in mind when it forbade interference with legal rights by ‘threat, intimidation, or coercion.’ Plaintiffs have cited no case where economic or monetary pressures alone have been found to constitute coercion under the Bane Act.” (*County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354, 371 [262 Cal.Rptr.3d 1].)
- “It is the intent of the Legislature in enacting this act to clarify that an action brought pursuant to Section 52.1 of the Civil Code does not require the individual whose rights are secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of California, to be a member of a protected class identified by its race, color, religion, or sex, among other things.” (Assembly Bill 2719 (Stats. 2000, ch. 98) [abrogating the holding of *Boccatto v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 [35 Cal.Rptr.2d 282]].)
- “Subdivision (j) of Civil Code section 52.1 provides that speech alone is insufficient to support such an action, except upon a showing that the speech itself threatens violence against a specific person or group of persons, the person or group of persons against whom the speech is directed ‘reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence has the apparent ability to carry out the threat.’ . . . The presence of the express ‘reasonable fear’ element, in addition to the ‘apparent ability’ element, in Civil Code section 52.1, governing civil actions for damages, most likely reflects the Legislature’s determination [that] a defendant’s civil liability should depend on the harm actually suffered by the victim.” (*In re M.S., supra*, 10 Cal.4th at p. 715, internal citation omitted.)
- “[Q]ualified immunity of the kind applied to actions brought under section 1983 does not apply to actions brought under Civil Code section 52.1.” (*Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th 1230, 1246 [63 Cal.Rptr.3d 741].)
- “[A] wrongful detention that is ‘accompanied by the requisite threats, intimidation, or coercion’—‘coercion independent from the coercion inherent in the wrongful detention itself’ that is ‘deliberate or spiteful’—is a violation of the Bane Act.” (*Bender, supra*, 217 Cal.App.4th at p. 981, internal citations omitted.)

- “Here, there clearly *was* a showing of coercion separate and apart from the coercion inherent in an unlawful arrest. [Defendant officer] wrongfully detained and arrested plaintiff, because he had no probable cause to believe plaintiff had committed any crime. But, in addition, [defendant officer] deliberately and unnecessarily beat and pepper sprayed the unresisting, already handcuffed plaintiff. That conduct was not the coercion that is inherent in a wrongful arrest.” (*Bender, supra*, 217 Cal.App.4th at p. 979, original italics.)
- “We acknowledge that some courts have read *Shoyoye* as having announced ‘independen[ce] from [inherent coercion]’ as a requisite element of all Section 52.1 claims alleging search-and-seizure violations, but we think those courts misread the statute as well as the import of *Venegas*. By its plain terms, Section 52.1 proscribes any ‘interfere[nce] with’ or attempted ‘interfere[nce] with’ protected rights carried out ‘by threat, intimidation or coercion.’ Nothing in the text of the statute requires that the offending ‘threat, intimidation or coercion’ be ‘independent’ from the constitutional violation alleged.” (*Cornell, supra*, 17 Cal.App.5th at pp. 799–800.)
- “[W]here, as here, an unlawful arrest is properly pleaded and proved, the egregiousness required by Section 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee’s right to freedom from unreasonable seizure, not by whether the evidence shows something beyond the coercion ‘inherent’ in the wrongful detention.” (*Cornell, supra*, 17 Cal.App.5th at pp. 801–802.)
- “[T]his test ‘ “essentially sets forth two requirements for a finding of ‘specific intent’ . . . The first is a purely legal determination. Is the . . . right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that . . . right? If both requirements are met, even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted [with the requisite specific intent]—i.e., ‘in reckless disregard of constitutional [or statutory] prohibitions or guarantees.’ ” ’ ” (*Cornell, supra*, 17 Cal.App.5th at p. 803.)
- “Civil Code section 52.1 does not address the immunity established by section 844.6 [public entity immunity for injury to prisoners]. Nothing in Civil Code section 52.1 indicates an intent to abrogate this specific immunity provision. The immunity that it creates therefore applies to [plaintiff]’s Bane Act claim.” (*Towery v. State of California* (2017) 14 Cal.App.5th 226, 234 [221 Cal.Rptr.3d 692].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 989 et seq.

Cheng et al., Cal. Fair Housing and Public Accommodations § 14:5 (The Rutter

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Group)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

2 Wilcox, *California Employment Law*, Ch. 40, *Overview of Equal Employment Opportunity Laws*, § 40.12[2] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 117A, *Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion, or Violence*, § 117A.11 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, §§ 35.01, 35.20 et seq. (Matthew Bender)

3071. Retaliation for Refusing to Authorize Disclosure of Medical Information—Essential Factual Elements (Civ. Code, § 56.20(b))

[Name of plaintiff] **claims that** *[name of defendant]* **discriminated against** *[him/her/nonbinary pronoun]* **because** *[he/she/nonbinary pronoun]* **refused to authorize disclosure of** *[his/her/nonbinary pronoun]* **medical information to** *[name of defendant]*. **To establish this claim,** *[name of plaintiff]* **must prove all of the following:**

1. **That** *[name of defendant]* **asked** *[name of plaintiff]* **to sign an authorization so that** *[name of defendant]* **could obtain medical information about** *[name of plaintiff]* **from** *[his/her/nonbinary pronoun]* **health care providers;**
2. **That** *[name of plaintiff]* **refused to sign the authorization;**
3. **That** *[name of defendant]* *[specify retaliatory acts, e.g., terminated plaintiff's employment];*
4. **That** *[name of plaintiff]*'s **refusal to sign the authorization was a substantial motivating reason for** *[name of defendant]*'s **decision to** *[e.g., terminate plaintiff's employment];*
5. **That** *[name of plaintiff]* **was harmed; and**
6. **That** *[name of defendant]*'s **conduct was a substantial factor in causing** *[name of plaintiff]*'s **harm.**

Even if *[name of plaintiff]* **proves all of the above,** *[name of defendant]*'s **conduct was not unlawful if** *[name of defendant]* **proves that the lack of the medical information made it necessary to** *[e.g., terminate plaintiff's employment].*

New June 2015; Revised May 2020

Directions for Use

An employer may not discriminate against an employee in terms or conditions of employment due to the employee's refusal to sign an authorization to release the employee's medical information to the employer. (Civ. Code, § 56.20(b).) However, an employer may take any action that is necessary in the absence of the medical information due to the employee's refusal to sign an authorization. (*Ibid.*)

Give this instruction if an employee claims that the employer retaliated against the employee for refusing to authorize release of medical information. The employee has the burden of proving a causal link between the refusal to authorize and the employer's retaliatory actions. The employer then has the burden of proving necessity. (See *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 453 [177 Cal.Rptr.3d 145].) If necessary, the instruction may be expanded to define

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“medical information.” (See Civ. Code, § 56.05(j) [“medical information” defined].)

The statute requires that the employer’s retaliatory act be “due to” the employee’s refusal to release the medical information. (Civ. Code, § 56.20(b).) One court has instructed the jury that the refusal to release must be a “motivating reason” for the retaliation. (See *Kao, supra*, 229 Cal.App.4th at p. 453.) With regard to the causation standard under the Fair Employment and Housing Act, the California Supreme Court has held that the protected activity must have been a *substantial* motivating reason. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, “*Substantial Motivating Reason*” Explained.)

Sources and Authority

- Confidentiality of Medical Information Act. Civil Code section 56 et seq.
- Employee’s Refusal to Authorize Release of Medical Records to Employer. Civil Code section 56.20(b).
- “An employer ‘discriminates’ against an employee in violation of section 56.20, subdivision (b), if it improperly retaliates against or penalizes an employee for refusing to authorize the employee’s *health care provider* to disclose confidential medical information *to the employer or others* (see Civ. Code, § 56.11), or for refusing to authorize *the employer* to disclose confidential medical information relating to the employee *to a third party* (see Civ. Code, § 56.21).” (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 861 [59 Cal.Rptr.2d 696, 927 P.2d 1200], original italics.)
- “[T]he jury was instructed that if [plaintiff] proved his refusal to authorize release of confidential medical information for the FFD [fitness for duty examination] was ‘the motivating reason for [his] discharge,’ [defendant] ‘nevertheless avoids liability by showing that . . . its decision to discharge [plaintiff] was necessary because [plaintiff] refused to take the FFD examination.’” (*Kao, supra*, 229 Cal.App.4th at p. 453.)

Secondary Sources

3 Wilcox, California Employment Law, Ch. 51, *Confidentiality of Medical Information*, § 51.13

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.202[4] (Matthew Bender)

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3000, *Violation of Federal Civil Rights—In General—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3001. Public Entity Liability (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

1. Did the *[name of local governmental entity]* have an official *[policy/custom]* *[specify policy or custom]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of local governmental entity]* know, or should it have been obvious to it, that this official *[policy/custom]* was likely to result in a deprivation of the right *[specify right violated]*?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of officer or employee]* an *[officer/employee/[other]]* of *[name of local governmental entity]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of officer or employee]* *[intentionally/[insert other applicable state of mind]]* *[insert conduct allegedly violating plaintiff's civil rights]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of officer or employee]*'s conduct violate *[name of plaintiff]*'s right *[specify right]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of officer or employee]* act because of this official

or Custom—Essential Factual Elements. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant]

New September 2003; Revised April 2007, December 2010, June 2011, December 2011; Renumbered from CACI No. VF-3006 December 2012; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3003, *Local Government Liability—Failure to Train—Essential Factual Elements*. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of

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action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3002 December 2012; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3022, *Unreasonable Search—Search With a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3003 December 2012; Revised December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 3023, *Unreasonable Search or Seizure—Search or Seizure Without a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3013. Unreasonable Search—Search Without a
Warrant—Affirmative Defense—Search Incident to Lawful Arrest
(42 U.S.C. § 1983)**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] search [*name of plaintiff*]'s [person/home/automobile/office/[*insert other*]] without a warrant?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*] acting or purporting to act in the performance of [*his/her/nonbinary pronoun*] official duties?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the search conducted as part of a lawful arrest of [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Did [*name of defendant*] search only [*name of plaintiff*] and the area within which [*name of plaintiff*] might have gained possession of a weapon or might have destroyed or hidden evidence?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was the search reasonable under the circumstances?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s search a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3004 December 2012; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3023, *Unreasonable Search or Seizure—Search or Seizure Without a Warrant—Essential Factual Elements*, and CACI No. 3024, *Affirmative Defense—Search Incident to Lawful Arrest*. This form can be modified if another affirmative defense is at issue (see CACI No. 3025,

Affirmative Defense—Consent to Search, and CACI No. 3026, Affirmative Defense—Exigent Circumstances).

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3007 December 2012; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3042, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Excessive Force*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual

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findings that are required in order to calculate the amount of prejudgment interest.

VF-3021. Violation of Prisoner’s Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm (42 U.S.C. § 1983)

We answer the questions submitted to us as follows:

- 1. While imprisoned, [describe violation that created risk of serious harm, e.g., was [name of plaintiff] placed in a cell block with rival gang members]?**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of defendant]’s conduct create a substantial risk of serious harm to [name of plaintiff]’s health or safety?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] know that [his/her/nonbinary pronoun] conduct created a substantial risk of serious harm to [name of plaintiff]’s health or safety?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Was there a reasonable justification for the conduct?**

_____ **Yes** _____ **No**

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Was [name of defendant] acting or purporting to act in the performance of [his/her/nonbinary pronoun] official duties?**

_____ **Yes** _____ **No**

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Directions for Use

This verdict form is based on CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3022. Violation of Prisoner’s Federal Civil Rights—Eighth
Amendment—Medical Care (42 U.S.C. § 1983)**

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a serious medical need?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know that *[name of plaintiff]* faced a substantial risk of serious harm if *[his/her/nonbinary pronoun]* medical need went untreated?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* consciously disregard the risk by not taking reasonable steps to treat *[name of plaintiff]*’s medical need?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her/nonbinary pronoun]* official duties?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*’s deliberate indifference a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*’s damages?

- [a. Past economic loss

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If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3023. Violation of Prisoner's Federal Civil Rights—Eighth
Amendment—Deprivation of Necessities**

We answer the questions submitted to us as follows:

1. While imprisoned, was [*name of plaintiff*] deprived of [*describe deprivation, e.g., clothing*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was this deprivation sufficiently serious in that it denied [*name of plaintiff*] a minimal necessity of life?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*]'s conduct create a substantial risk of serious harm to [*name of plaintiff*]'s health or safety?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] know that [*his/her/nonbinary pronoun*] conduct created a substantial risk of serious harm to [*name of plaintiff*]'s health or safety?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was there a reasonable justification for [*name of defendant*]'s conduct?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*] acting or purporting to act in the

the [clerk/bailiff/court attendant].

New December 2015; Revised December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]**[d. Future noneconomic loss, including [physical pain/mental suffering:]** \$_____]**TOTAL \$_____****Answer question 5.****5. What amount, if any, do you award as a penalty against [name of defendant]?** \$_____**Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, June 2012; Renumbered from CACI No. VF-3010 December 2012; Revised June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff's association with another is the basis for the claim, modify question 2 as in element 2 of CACI No. 3060.

Questions 3 and 4 may be omitted if only the statutory minimum of \$4,000 damages is sought. Harm is presumed for this amount. (See Civ. Code, § 52(a); *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

The penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code,

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§ 52(a.) The judge should correct the verdict if the jury award goes over that limit. Also, if the jury awards nothing or an amount less than \$4,000 in question 5, the judge should increase that award to \$4,000 to reflect the statutory minimum.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	
[c. Past noneconomic loss, including [physical pain/mental suffering:]	\$_____]
[d. Future noneconomic loss, including [physical pain/mental suffering:]	\$_____]
TOTAL \$_____]	

Answer question 5.

5. What amount, if any, do you award as a penalty against [name of defendant]? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010, June 2012; Renumbered from CACI No. VF-3011 December 2012; Revised June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3061, *Discrimination in Business Dealings—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If an alternative basis for the defendant’s alleged motivation is at issue, modify question 2 as in element 2 of CACI No. 3061.

The award of a penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if the jury awards nothing or an amount less than \$4,000 in question 5, then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 3 and 4 may be omitted if only the statutory minimum

\$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Answer question 4.

4. **What amount, if any, do you award as a penalty against** *[name of defendant]*? \$ _____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3012 December 2012; Revised June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3062, *Gender Price Discrimination—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

The award of a penalty in question 4 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (See Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if jury awards nothing or an amount less than \$4,000 in question 4 then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 2 and 3 may be omitted if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801,

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814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3033. Ralph Act (Civ. Code, § 51.7)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [threaten/commit] violent acts against *[name of plaintiff]* [or *[his/her/nonbinary pronoun]* property]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*[name of defendant]*'s perception of] *[name of plaintiff]*'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/*[insert other actionable characteristic]*] a substantial motivating reason for *[name of defendant]*'s conduct?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [3. Would a reasonable person in *[name of plaintiff]*'s position have believed that *[name of defendant]* would carry out *[his/her/nonbinary pronoun]* threats?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- [4. Would a reasonable person in *[name of plaintiff]*'s position have been intimidated by *[name of defendant]*'s conduct?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[7. What amount do you award as punitive damages? \$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2009, December 2010; Renumbered from CACI No. VF-3013 December 2012; Revised June 2013, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3063, *Acts of Violence—Ralph*
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Act—Essential Factual Elements, and CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Include questions 3 and 4 in a case of threats of violence.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Punitive damages (question 7) are authorized by Civil Code section 52(b)(2). For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3034. Sexual Harassment in Defined Relationship (Civ. Code, § 51.9)

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a business, service, or professional relationship with *[name of defendant]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* make [sexual advances/sexual solicitations/sexual requests/demands for sexual compliance/*[insert other actionable conduct]*] to *[name of plaintiff]*?]

[or]

[Did *[name of defendant]* engage in [verbal/visual/physical] conduct of a [sexual nature/hostile nature based on gender]?]

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s conduct unwelcome and also pervasive or severe?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* unable to easily end the relationship with *[name of defendant]*?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Has *[name of plaintiff]* suffered or will *[he/she/nonbinary pronoun]* suffer [economic loss or disadvantage/personal injury/the violation of a statutory or constitutional right] as a result of *[name of defendant]*'s conduct?

Directions for Use

This verdict form is based on CACI No. 3065, *Sexual Harassment in Defined Relationship—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select either or both options for question 2 depending on the facts at issue.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances. For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.).

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3035. Bane Act (Civ. Code, § 52.1)

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make threats of violence against *[[name of plaintiff]/ [or] [name of plaintiff]’s property]*?

_____ Yes _____ No

[or]

1. Did *[name of defendant]* act violently against *[[name of plaintiff]/ [and] [name of plaintiff]’s property]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]’s* threats cause *[name of plaintiff]* to reasonably believe that if *[he/she/nonbinary pronoun]* exercised *[his/her/nonbinary pronoun]* right *[insert right, e.g., “to vote”]* *[name of defendant]* would commit violence against *[[him/her/nonbinary pronoun]/ [or] [his/her/nonbinary pronoun]* property and that *[name of defendant]* had the apparent ability to carry out the threat?

_____ Yes _____ No

[or]

2. Did *[name of defendant]* commit these acts of violence to *[prevent [name of plaintiff] from exercising [his/her/nonbinary pronoun] right [insert right, e.g., “to vote”]/retaliate against [name of plaintiff] for having exercised [his/her/nonbinary pronoun] right [insert right]]?*

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]’s* conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[Answer question 5.

5. What amount do you award as punitive damages? \$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3015 and Revised December 2012, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3066, *Bane Act—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may

need to be modified depending on the facts of the case.

Give the first option for elements 1 and 2 if the defendant has threatened violence. Give the second option if the defendant actually committed violence.

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of \$4,000 for violations of Civil Code section 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither subsection of Section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the Bane Act refers to section 52. (See Civ. Code, § 52.1(c).) This reference would seem to indicate that damages may be recovered under both subsections (a) and (b) of section 52. The court should compute the damages under section 52(a) by multiplying actual damages by three, and awarding \$4,000 if the amount is less. Questions 5 addresses punitive damages under section 52(b).

If no actual damages are sought, the \$4,000 statutory minimum damages may be awarded without proof of harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) In this case, only questions 1 and 2 need be answered.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[5. Did [*name of plaintiff*] prove by clear and convincing evidence that [*name of employee defendant*] acted with [recklessness/malice/oppression/ [or] fraud]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [*name of decedent*]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?
\$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent's Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff alleges that the defendant assisted in the wrongful conduct, modify question 1 as in element 2 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

VF-3100

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs are recoverable from the individual defendant without any additional showing of any kind. (Welf. & Inst. Code, § 15657.5(a).) Attorney fees are also recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the individual defendant acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4, include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[5. Did [name of plaintiff] prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [name of decedent]’s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff alleges that the defendant’s employees assisted in the wrongful conduct, modify question 1 as in element 1 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs will be recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the employee acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4 include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[lost profits \$_____]

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[6. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of employer defendant] had advance knowledge of the unfitness of [name of employee defendant] and employed [him/her/nonbinary pronoun] with a knowing disregard of the rights or safety of others?

_____ Yes _____ No]

[7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppresion/ [or] fraud]?

_____ Yes _____ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?

_____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, November 2017, May 2024

Directions for Use

This verdict form is based on CACI No. 3103, *Neglect—Essential Factual Elements*, CACI No. 3104, *Neglect—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

Optional questions 6, 7, and 8 address enhanced remedies. If the neglect is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent's predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the neglect led to the elder's death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6 or 7 or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[6. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee and employed [him/her/nonbinary pronoun] with a knowing disregard of the rights or safety of others?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?

_____ Yes _____ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3103, *Neglect—Essential Factual Elements*, CACI No. 3104, *Neglect—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the neglect led to the elder’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[5. Did *[name of plaintiff]* prove by clear and convincing evidence that an officer, a director, or a managing agent of *[name of employer defendant]* had advance knowledge of the unfitness of *[name of employee defendant]* and employed *[him/her/nonbinary pronoun]* with a knowing disregard of the rights or safety of others?

_____ Yes _____ No]

[6. Did *[name of plaintiff]* prove 1 through 3 above by clear and convincing evidence and also prove by clear and convincing evidence that *[name of employee defendant]* acted with [recklessness/malice/oppression/ [or] fraud]?

_____ Yes _____ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were *[name of decedent]*'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?

_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI

VF-3104

No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 5, 6, and 7 address enhanced remedies. If the physical abuse is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 5. (See Welf. & Inst. Code, § 15657(c).) Question 5 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 6. If the physical abuse led to the neglected elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

In the transitional language after question 3, direct the jury to answer questions 5 or 6 or both, depending on which questions are to be included. If question 6 is to be included but question 5 is not, then 6 will be renumbered as 5.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[5. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee and employed [him/her/nonbinary pronoun/them] with a knowing disregard of the rights or safety of others?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] prove 1 through 3 by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppresion/ [or] fraud]?

_____ Yes _____ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were [name of decedent]’s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI

No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 5 and 6 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 5 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the physical abuse led to the elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[medical expenses \$_____]

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

[6. Did [name of plaintiff] prove by clear and convincing evidence that [name of employee defendant] was an officer, director, or managing agent of [name of employer defendant] acting on behalf of [name of defendant].

_____ Yes _____ No]

[7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence?

_____ Yes _____ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? _____]

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 6, 7, and 8 address enhanced remedies. If the abduction is proved by clear and convincing evidence, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.05.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657.05(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6, 7, or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

[other past economic loss \$_____]

Total Past Economic Damages: \$_____]

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

6. Did [name of plaintiff] prove by clear and convincing evidence that the employee was an officer, a director, or a managing agent of [name of defendant] acting in on behalf of [name of defendant]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of plaintiff] prove 1 through 4 by clear and convincing evidence?

_____ Yes _____ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?

_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657.05(b); Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3200. Failure to Repurchase or Replace Consumer Good After
Reasonable Number of Repair Opportunities (Civ. Code,
§ 1793.2(d))**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] buy [a/an] [*consumer good*]
[from/distributed by/manufactured by] [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] give [*name of plaintiff*] a warranty?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the [*consumer good*] fail to perform as represented in the warranty?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] or its authorized repair facility repair the [*consumer good*] to conform to the [written statement/represented quality] after a reasonable number of opportunities?

_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to replace the [*consumer good*] or reimburse [*name of plaintiff*] the appropriate amount of money?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What amount is [*name of plaintiff*] entitled to receive as

reimbursement for the [consumer good]? Calculate as follows:

Determine: Purchase price of the [consumer good]: \$_____

Subtract: Value of use by [name of plaintiff] before [he/she/nonbinary pronoun/it] discovered the defect: \$_____

Subtract: The amount, if any, that [name of defendant] previously reimbursed [name of plaintiff] for the [consumer good] \$_____

TOTAL \$_____

[7. What amount is plaintiff entitled to recover for [insert item(s) of claimed incidental damages]? \$_____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, October 2008, December 2010, December 2011, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3200, *Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements*, and CACI No. 3240, *Reimbursement Damages—Consumer Goods*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 7 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801,

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814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3201

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3243, *Consequential Damages*.

Normally, this verdict form would be combined with verdict forms containing the underlying cause(s) of action.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-3202. Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Affirmative Defense—Unauthorized or Unreasonable Use (Civ. Code, § 1793.2(d))

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] buy [a/an] [*consumer good*] [from/distributed by/manufactured by] [*name of defendant*]?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] give [*name of plaintiff*] a warranty?
_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the [*consumer good*] fail to perform as represented in the warranty?
_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the failure to comply with the warranty caused by unauthorized or unreasonable use of the [*consumer good*] following its sale?
_____ Yes _____ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] or its authorized repair facility repair the [*consumer good*] to conform to the [written statement/represented quality] after a reasonable number of opportunities?
_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 8 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3203. Breach of Express Warranty—New Motor Vehicle—Civil
Penalty Sought**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [buy/lease] [a/an] [*new motor vehicle*] [from/
distributed by/manufactured by] [*name of defendant*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] give [*name of plaintiff*] a written warranty?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the vehicle have a defect covered by the warranty that substantially impaired the vehicle's use, value, or safety to a reasonable [buyer/lessee] in [*name of plaintiff*]'s situation?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] or its authorized repair facility fail to repair the vehicle to match the written warranty after a reasonable number of opportunities to do so?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] fail to promptly replace or repurchase the vehicle?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages? Calculate as follows:

Add the following amounts:

- a. The purchase price of the vehicle itself: \$_____
- b. Charges for transportation and manufacturer-installed options: \$_____
- c. Finance charges actually paid by *[name of plaintiff]*: \$_____
- d. Sales tax, license fees, registration fees, and other official fees: \$_____
- e. Incidental and consequential damages: \$_____

[SUBTOTAL/TOTAL DAMAGES:] \$_____

[Calculate the value of the use of the vehicle before it was [brought in/submitted] for repair as follows:

1. Add dollar amounts listed in lines a and b above: \$_____
2. Multiply the result in step 1 by the number of miles the vehicle was driven before it was [brought in/submitted] for repair: \$_____
3. Divide the dollar amount in step 2 by 120,000 and insert result in VALUE OF USE below:

VALUE OF USE: \$_____

Subtract the VALUE OF USE from the SUBTOTAL above and insert result in TOTAL DAMAGES below:

TOTAL DAMAGES: \$_____]

[What is the number of miles that the vehicle was driven between the time when *[name of plaintiff]* took possession of the vehicle and the time when *[he/she/nonbinary pronoun/it]* first delivered the vehicle to *[name of defendant]* or its authorized repair facility to fix the problem?

Answer: _____ miles]

Answer question 7.

7. Did *[name of defendant]* willfully fail to repurchase or replace the *[new motor vehicle]*?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What amount, if any, do you impose as a penalty? [You may not exceed two times the “TOTAL DAMAGES” that you entered in question 6.] \$_____

PENALTY: \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised February 2005, June 2005, December 2005, February 2007, December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. Items of damages that do not apply to the facts of the case may be omitted.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form is based on CACI No. 3201, *Failure to Promptly Repurchase or Replace New Motor Vehicle After Reasonable Number of Repair Opportunities—Essential Factual Elements*, CACI No. 3241, *Restitution From Manufacturer—New Motor Vehicle*, and CACI No. 3244, *Civil Penalty—Willful Violation*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

If plaintiff was unable to deliver the vehicle, modify question 4 as in element 4 of CACI No. 3201. In question number 6, users have the option of either allowing the jury to calculate the deduction for value of use or asking the jury for the relevant mileage number only. The bracketed sentence in question 8 is intended to be given only if the jury has been asked to calculate the deduction for value of use.

VF-3204. Breach of Implied Warranty of Merchantability

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] buy a[n] [consumer good] [manufactured by/from] [name of defendant]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. At the time of purchase, was [name of defendant] in the business of [selling [consumer goods] to retail buyers] [manufacturing [consumer goods]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the [consumer good] of the same quality as those generally acceptable in the trade?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What amount is [name of plaintiff] entitled to receive as restitution to [him/her/nonbinary pronoun] for the [consumer good]?

\$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

VF-3204

This verdict form is based on CACI No. 3210, *Breach of Implied Warranty of Merchantability—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

Depending on the facts, question 3 can be modified to cover other grounds for breach of the warranty, as in element 3 of CACI No. 3210. Omit questions 4 if the plaintiff is not seeking consequential damages.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3210, *Breach of Implied Warranty of Merchantability—Essential Factual Elements*, and CACI No. 3221, *Affirmative Defense—Disclaimer of Implied Warranties*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

Depending on the facts, question 3 can be modified to cover other grounds for breach of the warranty, as in element 3 of CACI No. 3210.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

the [clerk/bailiff/court attendant].

New September 2003; Revised June 2005, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3206, *Breach of Disclosure Obligations—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If defendant is a manufacturer, substitute question 2 with a question modeled after the first bracketed option in element 2. Depending on the facts, question 4 can be modified to cover other grounds for breach of the warranty, as in elements 5 and 6 of CACI No. 3206. Make sure that the “yes” and “no” directions match appropriately.

Omit question 4 if the plaintiff is not seeking consequential damages.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3300

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*, and CACI No. 3330, *Affirmative Defense to Locality Discrimination Claim—Cost Justification*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3302. Below Cost Sales

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [offer to sell/sell] [*product/service*] at a price that was below cost?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*]'s purpose to injure competitors or destroy competition?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [*name of plaintiff*]'s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3301, *Below Cost Sales—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the facts involve a gift rather than a sale, question 1 can be modified according to

VF-3302

the second alternative in element 1 of CACI No. 3301.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3303. Below Cost Sales Claim—Affirmative Defense—Closed-out, Discontinued, Damaged, or Perishable Items

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [offer to sell/sell] [*product/service*] at a price that was below cost?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were [*his/her/nonbinary pronoun/its*] sales in the course of closing out, in good faith, all or any part of [*his/her/nonbinary pronoun/its*] supply of [*product*], in order to stop trade in [*product*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did [*name of defendant*] give sufficient notice of the sale to the public?

_____ Yes _____ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]’s purpose to injure competitors or destroy competition?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of defendant*]’s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]’s damages? \$_____

VF-3303

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3301, *Below Cost Sales—Essential Factual Elements*, and CACI No. 3331, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Closed-out, Discontinued, Damaged, or Perishable Items*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If other grounds for this defense are asserted, question 2 should be modified according to question 2 in CACI No. 3331. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3304. Loss Leader Sales

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [offer to sell/sell/offer the use of] [*product/service*] at prices that were below [*his/her/nonbinary pronoun/its*] costs?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of defendant*]'s purpose to influence, promote, or encourage the purchase of other merchandise from [*name of defendant*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of defendant*]'s intent to injure competitors or destroy competition?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]'s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify

the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If other grounds of liability are asserted, question 2 can be modified according to the bracketed alternatives in element 2 of CACI No. 3302.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3305. Loss Leader Sales Claim—Affirmative Defense—Meeting Competition

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [offer to sell/sell/offer the use of] *[product/service]* at prices that were below *[his/her/nonbinary pronoun/its]* costs?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were the sales of *[product/service]* made in an attempt, in good faith, to meet the legal prices of a competitor selling the same *[product/service]* in the ordinary course of business in the same area?

_____ Yes _____ No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s purpose to influence, promote, or encourage the purchase of other merchandise from *[name of defendant]*?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s intent to injure competitors or destroy competition?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have

the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages? \$_____

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*, and CACI No. 3333, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Meeting Competition*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If other grounds of liability are asserted, question 3 can be modified according to the alternative brackets in element 2 of CACI No. 3302. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3306

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3320, *Secret Rebates—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 2 should be omitted if the plaintiff is a competitor of the defendant, because that issue is covered by question 4.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3307. Secret Rebates Claim—Affirmative Defense—Functional Classifications

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] secretly [[give/receive] [payments/rebates/refunds/commissions/unearned discounts]/ [or] [give to some buyers/receive] services or privileges that were not given to other buyers purchasing on like terms and conditions]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] create different classes of customers, such as [broker/jobber/wholesaler/retailer/[*insert other*]]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip questions 3, 4, and 5 and answer question 6.

3. Did customers in the different classes perform different functions and assume the risk, investment, and costs involved?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was the difference in [price/rebate/discount/special services/privileges] for [*product/service*] given only in those sales where the favored buyer performed the function on which the claim of a different class is based?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was the difference in price reasonably related to the value of such function?

_____ Yes _____ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was a competitor harmed?

forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3402. Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Affirmative Defense—*In Pari Delicto*

We answer the questions submitted to us as follows:

1. Were or are [*name of defendant*] and [*name of alleged coparticipant*] competitors in the same or related markets?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] and [*name of alleged coparticipant*] agree to allocate or divide [customers/territories/products]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] and [*name of defendant*] have substantially equal economic strength?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was [*name of plaintiff*] at least equally responsible for the harmful conduct as [*name of defendant*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was [*name of plaintiff*] compelled by economic pressure to enter into the agreement?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Essential Factual Elements*, and CACI No. 3431, *Affirmative Defense—In Pari Delicto*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3402, *Horizontal Restraints—Dual Distributor Restraints—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3405. Horizontal Restraints—Group Boycott—Rule of Reason

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [and [*name of alleged coparticipant*]] agree to [*describe conduct, e.g., “formulate an arbitrary membership limitation rule with [*identify other participant[s]*”*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the purpose or effect of [*name of defendant*]’s conduct to restrain competition?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]’s conduct a substantial factor in causing harm to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]’s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3404, *Horizontal Restraints—Group Boycott—Rule of Reason—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3407. Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason Affirmative Defense—“Noerr-Pennington” Doctrine

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* **[and *[name of alleged coparticipant]*]** agree to *[describe conduct constituting an unreasonable restraint of trade]*?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were *[name of defendant]*'s actions before *[name of governmental body]* undertaken without regard to the merits?

_____ Yes _____ No

If your answer to question 2 is yes, then skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was the reason *[name of defendant]* engaged in *[specify the petitioning activity, e.g., “filing an objection to an environmental impact report”]* to use the *[specify the claimed process, e.g., “environmental agency approval”]* process to harm *[name of plaintiff]* by *[specify the manner of harm, e.g., “delaying *[name of plaintiff]*'s entry into the market”]*, rather than to obtain a successful outcome from that process?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the purpose or effect of *[name of defendant]*'s conduct to restrain competition?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*, and CACI No. 3430, “*Noerr-Pennington*” Doctrine.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3408. Tying—Real Estate, Products, or Services (Bus. & Prof. Code, § 16720)

We answer the questions submitted to us as follows:

- 1. Are [tying item] and [tied item] separate and distinct?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of defendant] sell [tying item] only if the buyer also purchased [tied item], or did [name of defendant] sell [tying item] and require or otherwise coerce buyers to [also purchase [tied item]] [agree not to purchase [tied item]] from any other supplier?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of defendant] have sufficient economic power in the market for [tying item] to coerce at least some buyers of [tying item] into [purchasing [tied item]] [agreeing not to purchase [tied item]] from a competitor of [name of defendant]?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did the conduct involve a substantial amount of sales, in terms of the total dollar value of [tied product or service]?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3420, *Tying—Real Estate, Products, or Services—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3421, *Tying-Products or Services—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If alternative grounds are asserted regarding question 3, this question can be modified according to element 3 of CACI No. 3421.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3500. Fair Market Value Plus Goodwill

We answer the questions submitted to us as follows:

1. What was the fair market value of the property on [insert date of valuation]? \$_____

Answer question 2.

2. What was the value of the loss of goodwill on [insert date of valuation]? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3501, “Fair Market Value” Explained, and CACI No. 3513, *Goodwill*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3501. Fair Market Value Plus Severance Damages

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [date of valuation]? \$_____

Answer question 2.

2. What was the fair market value of the remaining property on [date of valuation]? \$_____

Answer question 3.

3. What would the fair market value of the remaining property have been on [date of valuation] if the [name of public entity]'s proposed project were completed as planned? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, December 2016, May 2020, May 2024

Directions for Use

This verdict form is based on CACI No. 3501, “Fair Market Value” Explained, and CACI No. 3511, Permanent Severance Damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. For example, if the public entity’s project was completed before the date of valuation, modify question 3 accordingly.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3502. Fair Market Value Plus Loss of Inventory/Personal Property

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [insert date of valuation]? \$_____

[Answer question 2.]

2. What was the retail value on [insert date of valuation] of the portion of the lost inventory or personal property that was unique and not readily replaceable? \$_____]

[Answer question 3.]

3. What was the wholesale value on [insert date of valuation] of the portion of the lost inventory or personal property that was readily replaceable and not unique? \$_____]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3501, “Fair Market Value” Explained, and CACI No. 3507, *Personal Property and Inventory*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

In an eminent domain action, the jury finds only the amount of compensation. (*Emeryville Redevelopment v. Harcross Pigments* (2002) 101 Cal.App.4th 1083, 1116 [125 Cal.Rptr.2d 12].) The court should determine whether there is inventory or personal property that is unique and not readily replaceable. The jury should then determine the value of that property.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*.

This verdict form may need to be augmented for the jury to make any factual

findings that are required in order to calculate the amount of prejudgment interest.

3708. Peculiar-Risk Doctrine

[Name of plaintiff] claims that even if [name of independent contractor] was not an employee, [name of defendant] is responsible for [name of independent contractor]’s conduct because the work involved a special risk of harm.

A special risk of harm is a recognizable danger that arises out of the nature of the work or the place where it is done and requires specific safety measures appropriate to the danger. A special risk of harm may also arise out of a planned but unsafe method of doing the work. A special risk of harm does not include a risk that is unusual, abnormal, or not related to the normal or expected risks associated with the work.

To establish this claim, [name of plaintiff] must prove each of the following:

- 1. That the work was likely to involve a special risk of harm to others;**
- 2. That [name of defendant] knew or should have known that the work was likely to involve this risk;**
- 3. That [name of independent contractor] failed to use reasonable care to take specific safety measures appropriate to the danger to avoid this risk; and**
- 4. That [name of independent contractor]’s failure was a cause of harm to [name of plaintiff].**

[In deciding whether [name of defendant] should have known the risk, you should consider [his/her/nonbinary pronoun/its] knowledge and experience in the field of work to be done.]

New September 2003

Sources and Authority

- “The doctrine of peculiar risk is an exception to the common law rule that a hirer was not liable for the torts of an independent contractor. Under this doctrine, ‘a person who hires an independent contractor to perform work that is inherently dangerous can be held liable for tort damages when the contractor’s negligent performance of the work causes injuries to others. By imposing such liability without fault on the person who hires the independent contractor, the doctrine seeks to ensure that injuries caused by inherently dangerous work will be compensated, that the person for whose benefit the contracted work is done bears responsibility for any risks of injury to others, and that adequate safeguards are taken to prevent such injuries.’ This doctrine of peculiar risk thus

represents a limitation on the common law rule and a corresponding expansion of hirer vicarious liability.” (*Vargas v. FMI, Inc.* (2015) 233 Cal.App.4th 638, 646–647 [182 Cal.Rptr.3d 803], internal citation omitted.)

- “A critical inquiry in determining the applicability of the doctrine of peculiar risk is whether the work for which the contractor was hired involves a risk that is ‘peculiar to the work to be done,’ arising either from the nature or the location of the work and ‘ “against which a reasonable person would recognize the necessity of taking special precautions.” ’ ” (*Privette v. Superior Court* (1993) 5 Cal.4th 689, 695 [21 Cal.Rptr.2d 72, 854 P.2d 721], internal citations omitted.)
- “The courts created this exception in the late 19th century to ensure that innocent third parties injured by inherently dangerous work performed by an independent contractor for the benefit of the hiring person could sue not only the contractor, but also the hiring person, so that in the event of the contractor’s insolvency, the injured person would still have a source of recovery.” (*Toland v. Sunland Housing Group, Inc.* (1998) 18 Cal.4th 253, 258 [74 Cal.Rptr.2d 878, 955 P.2d 504].)
- “The analysis of the applicability of the peculiar risk doctrine to a particular fact situation can be broken down into two elements: (1) whether the work is likely to create a peculiar risk of harm unless special precautions are taken; and (2) whether the employer should have recognized that the work was likely to create such a risk.” (*Jimenez v. Pacific Western Construction Co.* (1986) 185 Cal.App.3d 102, 110 [229 Cal.Rptr. 575].)
- “Whether the particular work which the independent contractor has been hired to perform is likely to create a peculiar risk of harm to others unless special precautions are taken is ordinarily a question of fact.” (*Castro v. State of California* (1981) 114 Cal.App.3d 503, 511 [170 Cal.Rptr. 734], internal citations omitted; but see *Jimenez, supra*, 185 Cal.App.3d at pp. 109–111 [proper in this case for trial court to find peculiar risk as a matter of law].)
- “[T]he hiring person’s liability is cast in the form of the hiring person’s breach of a duty to see to it that special precautions are taken to prevent injuries to others; in that sense, the liability is ‘direct.’ Yet, peculiar risk liability is not a traditional theory of direct liability for the risks created by one’s own conduct: Liability . . . is in essence ‘vicarious’ or ‘derivative’ in the sense that it derives from the ‘act or omission’ of the hired contractor, because it is the hired contractor who has caused the injury by failing to use reasonable care in performing the work ‘The conclusion that peculiar risk is a form of vicarious liability is unaffected by the characterization of the doctrine as “direct” liability in situations when the person hiring an independent contractor ‘fails to provide in the contract that the contractor shall take [special] precautions.’ ” (*Toland, supra*, 18 Cal.4th at p. 265.)
- “A peculiar risk may arise out of a contemplated and unsafe method of work adopted by the independent contractor.” (*Mackey v. Campbell Construction Co.* (1980) 101 Cal.App.3d 774, 785–786 [162 Cal.Rptr. 64].)

CACI No. 3708

- “The term ‘peculiar risk’ means neither a risk that is abnormal to the type of work done, nor a risk that is abnormally great; it simply means ‘a special, recognizable danger arising out of the work itself.’ For that reason, as this court has pointed out, the term ‘special risk’ is probably a more accurate description than ‘peculiar risk,’ which is the terminology used in the Restatement.” (*Privette, supra*, 5 Cal.4th at p. 695, internal citations omitted.)
- “Even when work performed by an independent contractor poses a special or peculiar risk of harm, . . . the person who hired the contractor will not be liable for injury to others if the injury results from the contractor’s ‘collateral’ or ‘casual’ negligence.” (*Privette, supra*, 5 Cal.4th at p. 696.)
- “‘Casual’ or ‘collateral’ negligence has sometimes been described as negligence in the operative detail of the work, as distinguished from the general plan or method to be followed. Although this distinction can frequently be made, since negligence in the operative details will often not be within the contemplation of the employer when the contract is made, the distinction is not essentially one between operative detail and general method. ‘It is rather one of negligence which is unusual or abnormal, or foreign to the normal or contemplated risks of doing the work, as distinguished from negligence which creates only the normal or contemplated risk.’ ” (*Aceves v. Regal Pale Brewing Co.* (1979) 24 Cal.3d 502, 510 [156 Cal.Rptr. 41, 595 P.2d 619], overruled on other grounds in *Privette, supra*, 5 Cal.4th at p. 702, fn. 4.)
- “[T]he question is whether appellant’s alleged injuries resulted from negligence which was unusual or abnormal, creating a new risk not inherent in the work itself or in the ordinary or prescribed way of doing it, and not reasonably foreseeable by respondent; or whether the injuries were caused by normal negligence which precipitated a contemplated special risk of harm which was itself ‘peculiar to the work to be done, and arising out of its character, or out of the place where it is to be done, against which a reasonable man would recognize the necessity of taking special precautions.’ This question, like the broader issue of whether there was a peculiar risk inherent in the work being performed, is a question of fact to be resolved by the trier of fact.” (*Caudel v. East Bay Municipal Utility Dist.* (1985) 165 Cal.App.3d 1, 9 [211 Cal.Rptr. 222].)
- “[T]he dispositive issue for purposes of applying the peculiar risk doctrine to the present case is whether there was a direct relationship between the accident and the ‘particular work performed’ by [contractor]. In other words, if the ‘character’ of the work contributed to the accident, the peculiar risk doctrine applies. If the accident resulted from ‘ordinary’ use of the vehicle, the peculiar risk doctrine does not apply, notwithstanding the vehicle’s size and weight.” (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 309 [111 Cal.Rptr.3d 787], internal citation omitted.)
- “Nevertheless, we determined that the doctrine of peculiar risk does not apply when an independent contractor ‘seeks to hold the general contractor vicariously liable for injuries arising from risks inherent in the nature *or the location* of the

hired work over which the independent contractor has, through the chain of delegation, been granted control.’ ” (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 52 [282 Cal.Rptr.3d 658, 493 P.3d 212], original italics.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1394–1395

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.05[3][b] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers’ Tort Liability to Third Parties for Conduct of Employees*, § 30.10[2][b] (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer’s Liability for Employee’s Torts*, § 248.22[b] (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.41 et seq. (Matthew Bender)

California Civil Practice: Torts § 3:22 (Thomson Reuters)

[b. Future economic loss

[lost earnings \$_____]

[lost profits \$_____]

[medical expenses \$_____]

[other future economic loss \$_____]

Total Future Economic Damages: \$_____]**[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]****[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]****TOTAL \$_____****Signed:** _____
Presiding Juror**Dated:** _____**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].**

New September 2003; Revised April 2007, December 2010, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 3701, *Tort Liability Asserted Against Principal—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3901

substituted in question 2, as in CACI No. 3943.

VF-3905. Damages for Wrongful Death (Death of an Adult)

We answer the questions submitted to us as follows:

1. What are *[name of plaintiff]*'s economic damages?
 - [a. Past financial support that *[name of decedent]* would have contributed to the family: \$_____]
 - [b. Future financial support that *[name of decedent]* would have contributed to the family: \$_____]
 - [c. Past losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]
 - [d. Future losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]
 - [e. *[Name of decedent]*'s funeral and burial expenses: \$_____]
 - [f. Past household services that *[name of decedent]* would have provided: \$_____]
 - [g. Future household services that *[name of decedent]* would have provided: \$_____]
2. What are *[name of plaintiff]*'s noneconomic damages?
 - [a. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support, [and] [the enjoyment of sexual relations/*[name of decedent]*'s training and guidance] from *[insert date of death]* to the present: \$_____]
 - [b. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support, [and] [the enjoyment of sexual relations/*[name of decedent]*'s training

**VF-3906. Damages for Wrongful Death (Parents' Recovery for
Death of a Minor Child)**

We answer the questions submitted to us as follows:

1. What are *[name of plaintiff]*'s economic damages?
 - [a. Past financial support that *[name of decedent]* would have contributed to the family: \$_____]
 - [b. Future financial support that *[name of decedent]* would have contributed to the family: \$_____]
 - [c. Past losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]
 - [d. Future losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*: \$_____]
 - [e. *[Name of decedent]*'s funeral and burial expenses: \$_____]
 - [f. Past household services that *[name of decedent]* would have provided: \$_____]
 - [g. Future household services that *[name of decedent]* would have provided: \$_____]
2. What are *[name of plaintiff]*'s noneconomic damages?
 - [a. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from *[insert date of death]* to the present: \$_____]
 - [b. The loss of *[name of decedent]*'s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from today forward: \$_____]

**VF-3907. Damages for Loss of Consortium (Noneconomic
Damage)**

We answer the question submitted to us as follows:

- 1. What are [name of plaintiff]’s damages for loss of [his/her/nonbinary pronoun] [husband/wife]’s love, companionship, comfort, care, assistance, protection, affection, society, moral support, and enjoyment of sexual relations [or the ability to have children]? \$_____**

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New April 2004; Revised December 2010, May 2024

Directions for Use

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action. Insert the name of the spouse of the injured party as “name of plaintiff.”

This form is based on CACI No. 3920, *Loss of Consortium (Noneconomic Damage)*.

VF-3920. Damages on Multiple Legal Theories

What are [name of plaintiff]’s damages? [List each item of damages listed in CACI No. 3934.]

1. [e.g., economic damages: lost past earnings]. **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify all of the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
 2. [e.g., economic damages: past medical expenses]. **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
 3. [e.g., economic damages: lost future earnings]. **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
 4. [e.g., economic damages: future medical expenses]. **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
 5. [e.g., past noneconomic loss including [physical pain/mental suffering].] **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
 6. [e.g., future noneconomic loss including [physical pain/mental suffering].] **[Enter the amount below if you find that [name of defendant] is liable to [name of plaintiff] under [specify the legal theories supporting this element of damages; use “or” if more than one].]**
\$ _____
- TOTAL** \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2010; Revised May 2024

Directions for Use

This verdict form is for use with CACI No. 3934, *Damages on Multiple Legal Theories*. Together they are designed to avoid the jury’s awarding the same damages twice under different causes of action, counts, or legal theories, or failing to distinguish sufficiently what damages are being awarded under what cause of action, count, or legal theory.

If multiple causes of action are at issue, use this verdict form instead of the damages tables in each separate verdict form. If multiple verdict forms will be combined, delete all damages tables and incorporate this verdict form instead.

List each item of damages identified in CACI No. 3934. Include each item only once regardless of the number of claims under which the item may be recovered. The sentence after the item of damages must be included if the item is not recoverable under all causes of action, counts, or legal theories asserted against the defendant. The jury must be advised to find damages only if it has found liability on at least one theory under which the item is recoverable. For example, lost past earnings might be recoverable under all claims, in which case the additional sentence should be omitted. But noneconomic damages for mental suffering might be recoverable only under “the claim for bad-faith breach of insurance contract,” in which case the additional sentence must be included.

Often it will be necessary to identify items of damages with considerable specificity. For example, instead of just “emotional distress,” it may be necessary to specify “emotional distress from harassment before termination of employment” and “additional emotional distress because of termination of employment.” (See, e.g., *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 701–705 [101 Cal.Rptr.3d 773, 219 P.3d 749].)

4000. Conservatorship—Essential Factual Elements

[Name of petitioner] claims that [name of respondent] is gravely disabled due to [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism] and therefore [should be placed in a conservatorship/the conservatorship should be renewed]. In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled. To succeed on this claim, [name of petitioner] must prove beyond a reasonable doubt both of the following:

- 1. That [name of respondent] [has a [mental health disorder/severe substance use disorder/co-occurring mental health disorder and severe substance use disorder]/is impaired by chronic alcoholism]; and**
- 2. That [name of respondent] is gravely disabled as a result of the [mental health disorder/severe substance use disorder/co-occurring mental health disorder and severe substance use disorder/chronic alcoholism].**

New June 2005; Revised June 2016, May 2022, May 2024

Directions for Use

Give CACI No. 4002, “*Gravely Disabled*” *Explained*, with this instruction.

Select the appropriate option in the first sentence depending on whether the case involves an initial petition to establish a conservatorship or a successive petition for reappointment. (Welf. & Inst. Code, §§ 5350, 5361(b).)

If a county’s relevant governing body has adopted a resolution postponing the changes made to Welfare and Institutions Code section 5008 until January 1, 2026 (or an earlier date), do not include “severe substance use disorder” or “a co-occurring mental health disorder and severe substance use disorder.” (Welf. & Inst. Code, § 5008(h)(4) [authorizing a county’s deferral of changes made in Senate Bill 43 (Stats. 2023, ch. 637)].)

A different instruction will be required if the standard for mental incompetence under Penal Code section 1370 is alleged. (Welf. & Inst. Code, § 5008(h)(1)(B).)

Sources and Authority

- Right to Jury Trial. Welfare and Institutions Code section 5350(d).
- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “The Lanterman-Petris-Short Act (the act) governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act

includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.” (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008–1009 [36 Cal.Rptr.2d 40, 884 P.2d 988].)

- “LPS Act commitment proceedings are subject to the due process clause because significant liberty interests are at stake. But an LPS Act proceeding is civil. ‘[T]he stated purposes of the LPS Act foreclose any argument that an LPS commitment is equivalent to criminal punishment in its design or purpose.’ Thus, not all safeguards required in criminal proceedings are required in LPS Act proceedings.” (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1167 [231 Cal.Rptr.3d 79], internal citations omitted.)
- “The clear import of the LPS Act is to use the involuntary commitment power of the state sparingly and only for those truly necessary cases where a ‘gravely disabled’ person is incapable of providing for his basic needs either alone or with help from others.” (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1280 [221 Cal.Rptr.3d 622].)
- “The right to a jury trial upon the establishment of conservatorship is fundamental to the protections afforded by the LPS. As related, that right is expressly extended to the reestablishment of an LPS conservatorship.” (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037 [226 Cal.Rptr. 33], internal citations omitted.)
- “[T]he trial court erred in accepting counsel’s waiver of [conservatee]’s right to a jury trial” (*Estate of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253 [193 Cal.Rptr.3d 237].)
- “ ‘The due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act.’ An LPS commitment order involves a loss of liberty by the conservatee. Consequently, it follows that a trial court must obtain a waiver of the right to a jury trial from the person who is subject to an LPS commitment.” (*Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, 382–383 [199 Cal.Rptr.3d 689].)
- “We . . . hold that capacity or willingness to accept treatment is a relevant factor to be considered on the issue of grave disability but is not a separate element that must be proven to establish a conservatorship.” (*Conservatorship of K.P.* (2021) 11 Cal.5th 695, 703 [280 Cal.Rptr.3d 298, 489 P.3d 296].)
- “We . . . hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or

shelter unaided by willing, responsible relatives, friends or appropriate third persons.” (*Conservatorship of Davis, supra*, 124 Cal.App.3d at p. 328, disapproved on other grounds in *Conservatorship of K.P., supra*, 11 Cal.5th at p. 717.)

- “The jury should determine if the person voluntarily accepts meaningful treatment, in which case no conservatorship is necessary. If the jury finds the person will not accept treatment, then it must determine if the person can meet his basic needs on his own or with help, in which case a conservatorship is not justified.” (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093 [242 Cal.Rptr. 289].)
- “Our research has failed to reveal any authority for the proposition [that] without a finding that the proposed conservatee is unable or unwilling to voluntarily accept treatment, the court must reject a conservatorship in the face of grave disability. . . . Some persons with grave disabilities are beyond treatment. Taken to its logical conclusion, they would be beyond the LPS Act’s reach, according to the argument presented in this appeal.” (*Conservatorship of Symington, supra*, 209 Cal.App.3d at p. 1469.)
- “The party seeking imposition of the conservatorship must prove the proposed conservatee’s grave disability beyond a reasonable doubt and the verdict must be issued by a unanimous jury.” (*Conservatorship of Susan T., supra*, 8 Cal.4th at p. 1009, internal citation omitted.)
- “Although there is no private right of action for a violation of section 5152, ‘aggrieved individuals can enforce the [LPS] Act’s provisions through other common law and statutory causes of action, such as negligence, medical malpractice, false imprisonment, assault, battery, declaratory relief, United States Code section 1983 for constitutional violations, and Civil Code section 52.1. [Citations.]’ ” (*Swanson v. County of Riverside* (2019) 36 Cal.App.5th 361, 368 [248 Cal.Rptr.3d 476].)

Secondary Sources

15 Witkin, Summary of California Law (11th ed. 2017) Wills and Probate, § 994

3 Witkin, California Procedure (6th ed.2021) Actions, § 103 et seq.

2 California Conservatorship Practice (Cont.Ed.Bar) Ch. 23

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 et seq. (Matthew Bender)

4001. “Mental Disorder” Explained

Revoked May 2024. Reserved for Future Use.

4002. “Gravely Disabled” Explained

The term “gravely disabled” means that a person is presently unable to provide for the person’s basic needs for food, clothing, shelter, personal safety, or necessary medical care because of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism]. [The term “gravely disabled” does not include persons with intellectual disabilities by reason of the disability alone.]

[[*Insert one or more of the following:*] [psychosis/bizarre or eccentric behavior/delusions/hallucinations/[*insert other*]] [is/are] not enough, by [itself/themselves], to find that [*name of respondent*] is gravely disabled. [He/She/Nonbinary pronoun] must be unable to provide for the basic needs of food, clothing, shelter, personal safety, or necessary medical care because of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism].]

[“Personal safety” means the ability of a person to survive safely in the community without involuntary detention or treatment.]

[“Necessary medical care” means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition, which, if left untreated, is likely to result in serious bodily injury. “Serious bodily injury” means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including but not limited to hospitalization, surgery, or physical rehabilitation.]

[If you find [*name of respondent*] will not take [his/her/nonbinary pronoun] prescribed medication without supervision and that a mental health disorder makes [him/her/nonbinary pronoun] unable to provide for [his/her/nonbinary pronoun] basic needs for food, clothing, shelter, personal safety, or necessary medical care without such medication, then you may conclude [*name of respondent*] is gravely disabled.

In determining whether [*name of respondent*] is gravely disabled, you may consider evidence that [he/she/nonbinary pronoun] did not take prescribed medication in the past. You may also consider evidence of [his/her/nonbinary pronoun] lack of insight into [his/her/nonbinary pronoun] mental health condition.]

In considering whether [*name of respondent*] is gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition.

In determining whether [name of respondent] is gravely disabled, you may consider whether [he/she/nonbinary pronoun] is unable or unwilling to voluntarily accept meaningful treatment.

New June 2005; Revised January 2018, May 2019, May 2020, May 2022, May 2024

Directions for Use

This instruction provides the definition of “gravely disabled” from Welfare and Institutions Code section 5008(h)(1)(A) and (h)(2), which will be the applicable standard in most cases. The instruction applies to both adults and minors.

(Conservatorship of M.B. (2018) 27 Cal.App.5th 98, 107 [237 Cal.Rptr.3d 775].)

If a county’s relevant governing body has adopted a resolution postponing the changes made to Welfare and Institutions Code section 5008, omit from the definition of “gravely disabled” the terms “personal safety” and “necessary medical care,” as well as “severe substance use disorder” and “a co-occurring mental health disorder and a severe substance use disorder.” (Welf. & Inst. Code, § 5008(h)(4) [authorizing a county’s deferral of changes made in Senate Bill 43 (Stats. 2023, ch. 637)].) These four terms should not be given in those counties until January 1, 2026, or an earlier date specified in the county’s resolution.

Read the bracketed sentence at the end of the first paragraph if appropriate to the facts of the case. There is another standard in Welfare and Institutions Code section 5008(h)(1)(B) involving a finding of mental incompetence under Penal Code section 1370. A different instruction will be required if this standard is alleged.

The Welfare and Institutions Code defines “severe substance use disorder.” (Welf. & Inst. Code, § 5008(o).) Give additional information about this term if appropriate.

For example, severe substance use disorder requires a diagnosis, so it may be preferable to identify the individual’s diagnosed severe substance use disorder.

The next to last paragraph regarding the likelihood of future deterioration may not apply if the respondent has no insight into the respondent’s mental health condition. *(Conservatorship of Walker (1989) 206 Cal.App.3d 1572, 1576–1577 [254 Cal.Rptr. 552].)*

If there is evidence concerning the availability of third parties that are willing to provide assistance to the proposed conservatee, see CACI No. 4007, *Third Party Assistance*.

Sources and Authority

- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “Severe Substance Use Disorder” Defined. Welfare and Institutions Code section 5008(o).
- “Personal Safety” Defined. Welfare and Institutions Code section 5008(p).
- “Necessary Medical Care” Defined. Welfare and Institutions Code section 5008(q).

- “Serious Bodily Injury” Defined. Welfare and Institutions Code section 15610.67.
- “The enactment of the LPS and with it the substitution of ‘gravely disabled’ for ‘in need of treatment’ as the basis for commitment of individuals not dangerous to themselves or others reflects a legislative determination to meet the constitutional requirements of precision. The term ‘gravely disabled’ is sufficiently precise to exclude unusual or nonconformist lifestyles. It connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter.” (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 284 [139 Cal.Rptr. 357], footnotes omitted.)
- “[T]he public guardian must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled.” (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 461 [203 Cal.Rptr.3d 667].)
- “The stricter criminal standard is used because the threat to the conservatee’s individual liberty and personal reputation is no different than the burdens associated with criminal prosecutions.” (*Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 [232 Cal.Rptr. 277] internal citations omitted.)
- “Bizarre or eccentric behavior, even if it interferes with a person’s normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival.” (*Conservatorship of Smith, supra*, 187 Cal.App.3d at p. 909.)
- “Under [Welfare and Institutions Code] section 5350, subdivision (e)(1), ‘a person is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.’ ” (*Conservatorship of Jesse G., supra*, 248 Cal.App.4th at p. 460.)
- “While [third person] may not have shown that he could manage appellant’s mental health symptoms as adeptly as would a person professionally trained to care for someone with a mental disorder, that is not the standard. As appellant states, ‘[t]he question in a LPS conservatorship case where the proposed conservatee asserts a third party assistance claim is not whether the third party will be able to manage the person’s mental health symptoms completely. Rather, the dispositive question is whether the person is able to provide the proposed conservatee with food, clothing, and shelter on a regular basis.’” (*Conservatorship of Jesse G., supra*, 248 Cal.App.4th at p. 463, fn. 4.)
- “We . . . hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third

CACI No. 4002

persons.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369].)

- “[A]n individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled.” (*Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1468 [257 Cal.Rptr. 860].)
- “[T]he pivotal issue is whether [respondent] was ‘presently’ gravely disabled and the evidence demonstrates that he was not. Accordingly, the order granting the petition must be overturned.” (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d. 1030, 1034 [226 Cal.Rptr. 33], fn. omitted, citing to *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18 [184 Cal.Rptr. 363].)
- “[A] conservatorship cannot be established because of a perceived likelihood of future relapse. To do so could deprive the liberty of persons who will not suffer such a relapse solely because of the pessimistic statistical odds. Because of the promptness with which a conservatorship proceeding can be invoked the cost in economic and liberty terms is unwarranted.” (*Conservatorship of Neal* (1987) 190 Cal.App.3d 685, 689 [235 Cal.Rptr. 577].)
- “A perceived likelihood of future relapse, without more, is not enough to justify establishing a conservatorship. Neither can such a likelihood justify keeping a conservatorship in place if its subject is not presently gravely disabled, in light of the statutory provisions allowing rehearings to evaluate a conservatee’s current status.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 302 [256 Cal.Rptr. 415], internal citation omitted.)
- “[T]he definition of ‘ [g]ravely disabled minor’ ’ from section 5585.25 is not part of the LPS Act, but is found in the Children’s Civil Commitment and Mental Health Treatment Act of 1988. (§ 5585.) This definition applies ‘only to the initial 72 hours of mental health evaluation and treatment provided to a minor. . . . Evaluation and treatment of a minor beyond the initial 72 hours shall be pursuant to the . . . [LPS Act].’ (§ 5585.20.) Accordingly, we must apply the definition found in the LPS Act, and determine whether there was substantial evidence Minor suffered from a mental disorder as a result of which she ‘would be unable to provide for [her] basic personal needs’ if she had to so provide.” (*Conservatorship of M.B.*, *supra*, 27 Cal.App.5th at p. 107.)
- “Theoretically, someone who is willing and able to accept voluntary treatment may not be gravely disabled if that treatment will allow the person to meet the needs for food, clothing, and shelter. Under the statutory scheme, however, this is an evidentiary conclusion to be drawn by the trier of fact. If credible evidence shows that a proposed conservatee is willing and able to accept treatment that would allow them to meet basic survival needs, the fact finder may conclude a reasonable doubt has been raised on the issue of grave disability, and the effort to impose a conservatorship may fail. It may be necessary in some cases for the fact finder to determine whether the treatment a proposed conservatee is prepared to accept will sufficiently empower them to meet basic survival needs. In some cases of severe dementia or mental illness, there may simply be no

treatment that would enable the person to ‘survive safely in freedom.’ ”
(*Conservatorship of K.P.* (2021) 11 Cal.5th 695, 711 [280 Cal.Rptr.3d 298, 489 P.3d 296].)

Secondary Sources

3 Witkin, *California Procedure* (6th ed. 2021) Actions, § 103 et seq.

2 *California Conservatorship Practice* (Cont.Ed.Bar) §§ 23.3, 23.5

32 *California Forms of Pleading and Practice*, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, §§ 361A.33, 361A.42 (Matthew Bender)

4004. Issues Not to Be Considered—Type of Treatment, Care, or Supervision

In determining whether [name of respondent] is gravely disabled, you must not consider or discuss the type of treatment, care, or supervision that may be ordered if a conservatorship is [established/renewed].

New June 2005; Revised May 2024

Sources and Authority

- “Petitioner’s proposed jury instruction reads as follows: ‘You are instructed that the matter of what kind or type of treatment, care or supervision shall be rendered is not a part of your deliberation, and shall not be considered in determining whether or not [proposed conservatee] is or is not gravely disabled. The problem of treatment, care and supervision of a gravely disabled person and whether or not he shall be detained in a sanitarium, private hospital, or state institution, is not within the province of the jury, but is a matter to be considered by the conservator in the event that the jury finds that [proposed conservatee] is gravely disabled.’ [¶] [T]he instruction should be given.” (*Conservatorship of Baber* (1984) 153 Cal.App.3d 542, 553 & fn. 7 [200 Cal.Rptr. 262].)
- “[I]nformation about the consequences of conservatorship for [proposed conservatee] was irrelevant to the only question before [the] jury: whether, as a result of a mental disorder, he is unable to provide for his basic personal needs for food, clothing, or shelter.” (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1168 [231 Cal.Rptr.3d 79].)

Secondary Sources

3 Witkin, California Procedure (6th ed. 2021) Actions, § 103 et seq.

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.89

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4005. Obligation to Prove—Reasonable Doubt

[Name of respondent] is presumed not to be gravely disabled. [Name of petitioner] has the burden of proving beyond a reasonable doubt that [name of respondent] is gravely disabled. The fact that a petition has been filed claiming [name of respondent] is gravely disabled is not evidence that this claim is true.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that [name of respondent] is gravely disabled as a result of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism]. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether [name of respondent] is gravely disabled, you must impartially compare and consider all the evidence that was received throughout the entire trial.

Unless the evidence proves that [name of respondent] is gravely disabled because of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism] beyond a reasonable doubt, you must find that [he/she/nonbinary pronoun] is not gravely disabled.

Although a conservatorship is a civil proceeding, the burden of proof is the same as in criminal trials.

New June 2005; Revised June 2016, May 2024

Directions for Use

The presumption in the first sentence of the instruction is perhaps open to question. Two older cases have held that there is such a presumption. (See *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1340 [249 Cal.Rptr. 415]; *Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1099 [242 Cal.Rptr. 289].) However, these holdings may have been based on the assumption that the California Supreme Court had incorporated all protections for criminal defendants into LPS proceedings. (See *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1] [proof beyond reasonable doubt and unanimous jury verdict required].)

Subsequent cases have made it clear that an LPS respondent is not entitled to all of the same protections as a criminal defendant. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 538 [53 Cal.Rptr.3d 856, 150 P.3d 738] [exclusionary rule and *Wende* review do not apply in LPS].)

Sources and Authority

- “A proposed conservatee has a constitutional right to a finding based on proof beyond a reasonable doubt. Without deciding whether the court has a sua sponte duty to so instruct, we are satisfied that, on request, a court is required to instruct in language emphasizing a proposed conservatee is presumed to not be gravely disabled until the state carries its burden of proof.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1099, internal citation omitted.)
- “[I]f requested, a court is required to instruct that a proposed conservatee is presumed not to be gravely disabled until the state carries its burden of proof.” (*Conservatorship of Law, supra*, 202 Cal.App.3d at p. 1340.)
- “Even if we view the presumption in a more general sense as a warning against the consideration of extraneous factors, we cannot conclude that the federal and state Constitutions require a presumption-of-innocence-like instruction outside the context of a criminal case. Particularly, we conclude that, based on the civil and nonpunitive nature of involuntary commitment proceedings, a mentally ill or disordered person would not be deprived of a fair trial without such an instruction.” (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1409 [122 Cal.Rptr.2d 384].)
- “Neither mental disorder nor grave disability is a crime.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 330 [177 Cal.Rptr. 369].)
- “More recently this court has recognized, however, that the analogy between criminal proceedings and proceedings under the LPS Act is imperfect at best and that not all of the safeguards required in the former are appropriate to the latter.” (*Conservatorship of Ben C., supra*, 40 Cal.4th at p. 538.)
- “In [*Conservatorship of*] *Roulet*, the California Supreme Court held that due process requires proof beyond a reasonable doubt and jury unanimity in conservatorship proceedings. However, subsequent appellate court decisions have not extended the application of criminal law concepts in this area.” (*Conservatorship of Maldonado* (1985) 173 Cal.App.3d 144, 147 [218 Cal.Rptr. 796].)

Secondary Sources

3 Witkin, California Procedure (6th ed. 2021) Actions, §§ 103, 116

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.81

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42[8][c] (Matthew Bender)

4006. Sufficiency of Indirect Circumstantial Evidence

You may not decide that [name of respondent] is gravely disabled based substantially on indirect evidence unless this evidence:

- 1. Is consistent with the conclusion that [name of respondent] is gravely disabled due to [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism]; and**
- 2. Cannot be explained by any other reasonable conclusion.**

If the indirect evidence suggests two reasonable interpretations, one of which suggests the existence of a grave disability and the other its nonexistence, then you must accept the interpretation that suggests [name of respondent] is not gravely disabled.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable one.

If you base your verdict on indirect evidence, [name of petitioner] must prove beyond a reasonable doubt each fact essential to your conclusion that [name of respondent] is gravely disabled.

New June 2005; Revised May 2024

Directions for Use

Read this instruction immediately after CACI No. 202, *Direct and Indirect Evidence*.

Sources and Authority

- “[W]here proof to establish a conservatorship for a person alleged to be gravely disabled is based upon substantially circumstantial evidence, the proposed conservatee is entitled, on request in an appropriate case, to have the jurors instructed as to the principles relevant when applying circumstantial evidence to the beyond a reasonable doubt burden of proof.” (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1088 [242 Cal.Rptr. 289].)
- “A proposed conservatee is entitled to procedural due process protections similar to a criminal defendant since fundamental liberty rights are at stake. The trial court had a sua sponte duty to correctly instruct on the general principles of law necessary for the jury’s understanding of the case.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1092, fn. 5, internal citations omitted.)
- “The court has no duty to give the [circumstantial evidence jury instructions

CACI No. 4006

applicable to criminal cases] in a case where the circumstantial evidence necessary to prove a certain mental state is not subject to any inference except that pointing to the existence of that mental state.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1098; *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1342 [249 Cal.Rptr. 415].)

- “Where a noncriminal case is to be evaluated by a reasonable doubt standard, it follows that a party on a proper state of the evidence is entitled on request to have jurors informed of the manner in which that standard must be established when the evidence consists substantially of circumstantial evidence.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1098.)

Secondary Sources

3 Witkin, California Procedure (6th ed. 2021) Actions, § 106

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.90

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4007. Third Party Assistance

A person is not “gravely disabled” if [he/she/nonbinary pronoun] can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the person’s basic needs for food, clothing, shelter, personal safety, or necessary medical care.

You must not consider offers by family, friends, or others unless they [have testified to/stated specifically in writing] their willingness and ability to help provide [name of respondent] with food, clothing, shelter, personal safety, or necessary medical care. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

[Assistance provided by a correctional facility does not constitute third party assistance.]

New June 2005; Revised May 2024

Sources and Authority

- Help of Family or Friends. Welfare and Institutions Code section 5350(e).
- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “[A] person is not ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1) if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends or third parties.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 321 [177 Cal.Rptr. 369].)
- “As we view the broad purpose of the LPS Act, imposition of a conservatorship should be made only in situations where it is truly necessary. To accomplish this purpose evidence of the availability of third party assistance must be considered.” (*Conservatorship of Early* (1983) 35 Cal.3d 244, 253 [197 Cal.Rptr. 539, 673 P.2d 209].)
- “The California Supreme Court in *Conservatorship of Early* . . . concluded although a person might be gravely disabled if left to his or her own devices, he or she may be able to function successfully in freedom with the support and assistance of family and friends. The court recognized almost everyone depends to a greater or lesser extent upon others in order to survive in our complex society.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 299 [256 Cal.Rptr. 415].)
- “In *Conservatorship of Early* . . . the Supreme Court held that it was error for the trial court to refuse to admit evidence of and to fail to instruct on the ‘availability of assistance of others to meet the basic needs of a person afflicted with a mental disorder.’ ” (*Conservatorship of Baber* (1984) 153 Cal.App.3d

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542, 552–553 [200 Cal.Rptr. 262], citation omitted.)

- “Corrections custody does not qualify as third party assistance under the LPS Act as interpreted by case law.” (*Conservatorship of Jones, supra*, 208 Cal.App.3d at p. 303.)
- “Under section 5350, subdivision (e)(1), a person is not gravely disabled only if he or she can *survive safely* with the assistance of a third party. There is substantial evidence that the assistance offered by [respondent’s mother], while well-intended, would not meet this requirement.” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 699 [1 Cal.Rptr. 2d 46], original italics, footnote omitted.)
- “The parties have raised the issue of whether section 5350, subdivision (e)(2), precluded the trial court from considering [petitioner’s mother’s] testimony on the issue of third party assistance. This section provides that third parties shall not be considered willing or able to provide assistance unless they so indicate in writing. This section has no application in this case. The purpose of section 5350, subdivision (e), ‘is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person’s basic needs for food, clothing, or shelter.’ This was not the case here; [petitioner’s mother] took the stand at trial and testified as to her willingness to provide assistance to her daughter. No purpose of section 5350, subdivision (e), would be served by requiring her to also execute a writing to this effect.” (*Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699, fn. 5.)

Secondary Sources

3 Witkin, California Procedure (6th ed.2021) Actions, § 104

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.4

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4008. Third Party Assistance to Minor

A minor is not “gravely disabled” if [he/she/nonbinary pronoun] can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the minor’s health, safety, and development, including food, clothing, shelter, personal safety, and necessary medical care.

You must not consider offers by family, friends, or others unless they [have testified to/stated specifically in writing] their willingness and ability to help provide for [name of respondent]’s health, safety, and development. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

[Assistance provided by a correctional facility does not constitute third party assistance.]

New June 2005; Revised May 2024

Sources and Authority

- Help of Family and Friends. Welfare and Institutions Code section 5350(e).
- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “[A] person is not ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1) if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends or third parties.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 321 [177 Cal.Rptr. 369].)
- “Although a minor may not be legally responsible to provide for his basic personal needs, or may suffer disabilities other than a mental disorder which preclude him from so providing, the [statutory] definition is nevertheless applicable. A minor is ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1), when the trier of fact, on expert and other testimony, finds that disregarding other disabilities, if any, the minor, because of the further disability of a mental disorder, would be unable to provide for his basic personal needs. Immaturity, either physical or mental when not brought about by a mental disorder, is not a disability which would render a minor ‘gravely disabled’ within the meaning of section 5008.” (*In re Michael E.* (1975) 15 Cal.3d 183, 192, fn. 12 [123 Cal.Rptr. 103, 538 P.2d 231].)
- “As we view the broad purpose of the LPS Act, imposition of a conservatorship should be made only in situations where it is truly necessary. To accomplish this purpose evidence of the availability of third party assistance must be considered.” (*Conservatorship of Early* (1983) 35 Cal.3d 244, 253 [197 Cal.Rptr. 539, 673 P.2d 209].)

CACI No. 4008

- “The California Supreme Court in *Conservatorship of Early* . . . concluded although a person might be gravely disabled if left to his or her own devices, he or she may be able to function successfully in freedom with the support and assistance of family and friends. The court recognized almost everyone depends to a greater or lesser extent upon others in order to survive in our complex society.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 299 [256 Cal.Rptr. 415].)
- “Corrections custody does not qualify as third party assistance under the LPS Act as interpreted by case law.” (*Conservatorship of Jones, supra*, 208 Cal.App.3d at p. 303.)
- “Under section 5350, subdivision (e)(1), a person is not gravely disabled only if he or she can *survive safely* with the assistance of a third party. There is substantial evidence that the assistance offered by [respondent’s mother], while well-intended, would not meet this requirement.” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 699 [1 Cal.Rptr. 2d 46], original italics, footnote omitted.)
- “The parties have raised the issue of whether section 5350, subdivision (e)(2), precluded the trial court from considering [petitioner’s mother’s] testimony on the issue of third party assistance. This section provides that third parties shall not be considered willing or able to provide assistance unless they so indicate in writing. This section has no application in this case. The purpose of section 5350, subdivision (e), ‘is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person’s basic needs for food, clothing, or shelter.’ This was not the case here; [petitioner’s mother] took the stand at trial and testified as to her willingness to provide assistance to her daughter. No purpose of section 5350, subdivision (e), would be served by requiring her to also execute a writing to this effect.” (*Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699, fn. 5.)

Secondary Sources

3 Witkin, California Procedure (6th ed.2021) Actions, §§ 103, 105

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.4

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, §§ 361A.42, 361A.45 (Matthew Bender)

VF-4000. Conservatorship—Verdict Form

Select one of the following two options:

_____ 12 jurors find that [*name of respondent*] is presently gravely disabled due to [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism].

_____ 9 or more jurors find that [*name of respondent*] is not presently gravely disabled due to [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism].

[If you have concluded that [*name of respondent*] is gravely disabled due to [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and severe substance use disorder/impairment by chronic alcoholism], then answer the following:

Do all 12 jurors find that [*name of respondent*] is disqualified from voting because [*he/she/nonbinary pronoun*] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process?

_____ Yes _____ No]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New June 2005; Revised December 2010, May 2017, May 2024

Directions for Use

The question regarding voter disqualification is bracketed. The judge must decide whether this question is appropriate in a given case. (See CACI No. 4013, *Disqualification From Voting*.)

**VF-4200. Actual Intent to Hinder, Delay, or Defraud
Creditor—Affirmative Defense—Good Faith**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?
_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incur an obligation] to [*name of defendant*]?
_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] [transfer the property/incur the obligation] with the intent to hinder, delay, or defraud one or more of [*his/her/nonbinary pronoun/its*] creditors?
_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of debtor*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?
_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [[*name of defendant*]/[*name of third party*]] receive the property from [*name of debtor*] in good faith?
_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Did [[*name of defendant*]/[*name of third party*]] receive the property for a reasonably equivalent value?

_____ Yes _____ No

If your answer to question 6 is yes, stop here, answer no further questions, and have the presiding juror sign and date this form. If you answered no, then answer question 7.

7. What are [*name of plaintiff*]'s damages?

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2011; Revised June 2016, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 4200, *Actual Intent to Hinder, Delay, or Defraud a Creditor—Essential Factual Elements*, and CACI No. 4207, *Affirmative Defense—Good Faith*. The defendant is the transferee of the property. The transferee may have received the property in good faith even though the debtor had a fraudulent intent. (See *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1299 [123 Cal.Rptr.2d 924].)

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-4201. Constructive Fraudulent Transfer—No Reasonably
Equivalent Value Received**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incur an obligation] to [*name of defendant*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. [[Was [*name of debtor*] [in business/about to start a business]/Did [*name of debtor*] enter into a transaction] when [his/her/nonbinary pronoun/its] remaining assets were unreasonably small for the [business/transaction]?

[or]

[Did [*name of debtor*] intend to incur debts beyond [his/her/nonbinary pronoun/its] ability to pay as they became due?]

[or]

[Did [*name of debtor*] believe or should [he/she/nonbinary pronoun/it] reasonably have believed that [he/she/nonbinary pronoun/it] would incur debts beyond [his/her/nonbinary pronoun/its] ability to pay as they became due?]

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you

answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of debtor]'s conduct a substantial factor in causing [name of plaintiff]'s harm?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

TOTAL \$ _____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2011; Revised June 2016, December 2016, May 2024

Directions for Use

This verdict form is based on CACI No. 4202, *Constructive Fraudulent Transfer—No Reasonably Equivalent Value Received—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-4202. Constructive Fraudulent Transfer—Insolvency

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incur an obligation] to [*name of defendant*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*]'s right to payment from [*name of debtor*] arise before [*name of debtor*] [transferred property/incurred an obligation]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of debtor*] insolvent at that time or did [*name of debtor*] become insolvent as a result of the [transfer/ obligation]?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of debtor*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?

4328. Affirmative Defense—Victim of Abuse or Violence (Code Civ. Proc., § 1161.3)

[Name of defendant] **claims that** *[name of plaintiff]* **is not entitled to evict** *[him/her/nonbinary pronoun]* **because** *[name of plaintiff]* **filed this lawsuit based on** *[an] act[s] of [domestic violence/sexual assault/stalking/human trafficking/ [or] abuse of an elder or dependent adult/ [or] [specify crime from Civil Code section 1946.7]]* **against** *[[name of defendant]/ [or] a member of [name of defendant]’s immediate family/ [or] a member of [name of defendant]’s household].* **To succeed on this defense,** *[name of defendant]* **must prove all of the following:**

- 1. That** *[[name of defendant]/ [or] a member of [name of defendant]’s immediate family/ [or] a member of [name of defendant]’s household]* **was a victim of** *[domestic violence/sexual assault/stalking/human trafficking/ [or] abuse of an elder or dependent adult/ [or] [specify crime from Civil Code section 1946.7]]*;
- 2. That the act[s] of** *[domestic violence/sexual assault/stalking/human trafficking/ [or] abuse of an elder or dependent adult/ [or] [specify crime from Civil Code section 1946.7]]* **[was/were] documented in a** *[court order/law enforcement report/statement of a qualified third party acting in a professional capacity/[specify other evidence or documentation]]*;
- 3. That the person who committed the act[s] of** *[domestic violence/sexual assault/stalking/human trafficking/ [or] abuse of an elder or dependent adult/ [or] [specify crime from Civil Code section 1946.7]]* **is not a tenant of the same living unit as** *[[name of defendant]/ [or] a member of [name of defendant]’s immediate family/ [or] a member of [name of defendant]’s household]; and*
- 4. That** *[name of plaintiff]* **filed this lawsuit because of the act[s] of** *[domestic violence/sexual assault/stalking/human trafficking/ [or] abuse of an elder or dependent adult/ [or] [specify crime from Civil Code section 1946.7]].*

Even if *[name of defendant]* **proves all of the above,** *[name of plaintiff]* **may still evict** *[name of defendant]* **if** *[name of plaintiff]* **proves all of the following:**

- 1. That the person who committed the abuse or violence threatened,** **by words or by actions, the physical safety of other** *[tenants/ [or] guests/ [or] invitees/ [,/or] licensees]*;
- 2. That** *[name of plaintiff]* **gave** *[name of defendant]* **a three-day notice requiring** *[him/her/nonbinary pronoun]* **not to voluntarily permit or**

consent to the presence on the property of the person who committed the abuse or violence; and

- 3. That, after the three-day notice expired, [name of defendant] voluntarily permitted or consented to the presence on the property of the person who committed the abuse or violence.**

New December 2011; Revised June 2013, June 2014, January 2019, May 2020, May 2024

Directions for Use

This instruction is a tenant’s affirmative defense alleging that the tenant is being evicted because the tenant, the tenant’s immediate family member, or a tenant’s household member was the victim of abuse or violence, including domestic violence, sexual assault, stalking, human trafficking, elder or dependent adult abuse, and other crimes. (See Code Civ. Proc., § 1161.3.) If the tenant establishes the elements of the defense, the landlord may attempt to establish a statutory exception that would allow the eviction. The last part of the instruction sets forth the exception.

“Abuse and violence” is defined by statute to include several acts. (Code Civ. Proc., § 1161.3(a); see Code Civ. Proc., § 1219 [sexual assault]; Civ. Code, §§ 1708.7 [stalking], 1946.7(a)(6) [a crime that caused bodily injury or death], (a)(7) [a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument], (a)(8) [a crime that included the use of force against the victim or a threat of force against the victim]; Fam. Code, § 6211 [domestic violence]; Pen. Code, §§ 236.1 [human trafficking], Section 646.9 [stalking]; Welf. & Inst. Code, § 15610.07 [abuse of elder or dependent adult].) Consider giving an additional special instruction defining the specific abuse or violence alleged to make the meaning clear to the jury.

Evidence of abuse or violence must be documented in a court order, law enforcement report, qualified third-party statement, or any other form of documentation or evidence that reasonably verifies that the abuse or violence occurred (element 2). (Code Civ. Proc., § 1161.3(a)(2)(A)–(D).) Consider giving an additional special instruction defining the type of documentation if it is necessary to make the meaning clear to the jury. A “qualified third party” is a health practitioner, domestic violence counselor, a sexual assault counselor, a human trafficking caseworker, or a victim of violent crime advocate. (Code Civ. Proc., § 1161.3(a)(6).) If the parties dispute whether a third party is qualified, consider giving an additional special instruction on the definition of “qualified third party.”

The tenant has a complete defense to the unlawful detainer cause of action if the tenant proves that the perpetrator is not a tenant of the same “dwelling unit” as the tenant, the tenant’s immediate family member, or household member unless the statutory exception is established. (Code Civ. Proc., § 1161.3(d)(1); see Code Civ.

Proc., § 1161.3(b)(2)(B).) “Dwelling unit” is expressed in element 3 as “living unit.” If the person who committed the abuse or violence is a tenant in residence of the same residential dwelling unit, then the statute provides for a partial eviction process under Code of Civil Procedure section 1174.27.

Sources and Authority

- Defense to Termination of Tenancy: Tenant Was Victim of Abuse or Violence. Code of Civil Procedure section 1161.3.
- Unlawful Detainer Remedies for Abuse or Violence Against Tenant. Code of Civil Procedure section 1174.27.

Secondary Sources

- 12 Witkin, Summary of California Law (11th ed. 2017) Real Property, § 714
- Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 11(I)-C, Particular Defenses, ¶¶ 11:230–231 (The Rutter Group)
- Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 4-D, *Other Issues*, ¶ 4:240 et seq. (The Rutter Group)
- Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 5-G, *Eviction Controls*, ¶ 5:288 et seq. (The Rutter Group)
- Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 8-D, *Answer To Unlawful Detainer Complaint*, ¶ 8:297 et seq., 8:381.10 (The Rutter Group)
- 7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.41 (Matthew Bender)
- 7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, § 210.64[15] (Matthew Bender)
- 29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.28[8] (Matthew Bender)
- 23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, § 236.76 (Matthew Bender)
- 1 Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 4, *Termination of Tenancy*, 4.20B
- 1 Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.21[12]

VF-4300. Termination Due to Failure to Pay Rent

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] fail to make at least one rental payment to [*name of plaintiff*] as required by the [lease/rental agreement/sublease]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] properly give [*name of defendant*] a written notice to pay the rent or vacate the property at least three days before [*date on which action was filed*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the amount due stated in the notice no more than the amount that [*name of defendant*] actually owed?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] pay [or attempt to pay] the amount stated in the notice within three days after service or receipt of the notice?

_____ Yes _____ No

If your answer to question 4 is no, then answer questions 5 and 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What is the amount of unpaid rent owed to [*name of plaintiff*]?

Include all amounts owed and unpaid from [*due date of first missed payment*] through [*date*], the date of expiration of the three-day notice.

Total Unpaid Rent: \$ _____]

6. What are [*name of plaintiff*]'s damages?

Determine the reasonable rental value of the property from [date], the date of expiration of the three-day notice, through [date of verdict].

Total Damages: \$ _____]

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2007; Revised December 2010, June 2013, December 2013, November 2019, May 2024

Directions for Use

This verdict form is based on CACI No. 4302, *Termination for Failure to Pay Rent—Essential Factual Elements*. See also the Directions for Use for that instruction. Questions 2 and 3 incorporate the notice requirements set forth in CACI No. 4303, *Sufficiency and Service of Notice of Termination for Failure to Pay Rent*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

In question 4, include “or attempt to pay” if the tenant alleges that the landlord refused to accept the rent when tendered. (See CACI No. 4327, *Affirmative Defense—Landlord’s Refusal of Rent*.)

If the day of receipt is at issue and any of the three days after the alleged date of receipt falls on a Saturday, Sunday, or judicial holiday, modify questions 2 and 4 to allow the tenant three days excluding weekends and judicial holidays to cure the default. (See Code Civ. Proc., § 1161(2).)

**VF-4301. Termination Due to Failure to Pay Rent—Affirmative
Defense—Breach of Implied Warranty of Habitability**

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] fail to make at least one rental payment to [*name of plaintiff*] as required by the [lease/rental agreement/sublease]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of plaintiff*] properly give [*name of defendant*] a written notice to pay the rent or vacate the property at least three days before [*date on which action was filed*]?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the amount due stated in the notice no more than the amount that [*name of defendant*] actually owed under the [lease/rental agreement/sublease]?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] pay [or attempt to pay] the amount stated in the notice within three days after service or receipt of the notice?

_____ Yes _____ No

If your answer to question 4 is no, then answer questions 5 and 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What is the amount of unpaid rent that [*name of defendant*] would owe to [*name of plaintiff*] if the property was in a habitable condition?

Include all amounts owed and unpaid from [*due date of first missed payment*] through [*date*], the date of expiration of the

three-day notice.

Total Unpaid Rent: \$ _____]

- 6. Did the [*name of plaintiff*] fail to provide substantially habitable premises during the time period for which [*name of defendant*] failed to pay the rent that was due?

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, answer question 8.

- 7. Did [*name of defendant*] contribute substantially to the uninhabitable conditions or interfere substantially with [*name of plaintiff*]'s ability to make necessary repairs?

_____ Yes _____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, [stop here, answer no further questions, and have the presiding juror sign and date this form. The court will determine the amount by which the rent due found in question 5 should be reduced because of uninhabitable conditions/skip question 8 and answer question 9].

- 8. What are [*name of plaintiff*]'s damages?

Determine the reasonable rental value of the property from [*date*], the date of expiration of the three-day notice, through [*date of verdict*].

Total Damages: \$ _____

- [9. What is the amount of reduced monthly rent that represents the reasonable rental value of the property in its uninhabitable condition?

\$ _____]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

*New December 2007; Revised December 2010, June 2013, December 2013,
November 2019, May 2024*

Directions for Use

This verdict form is based on CACI No. 4302, *Termination for Failure to Pay Rent—Essential Factual Elements*, and CACI No. 4320, *Affirmative Defense—Implied Warranty of Habitability*. See also the Directions for Use for those instructions.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If the existence of a landlord-tenant relationship is at issue, additional preliminary questions will be needed based on elements 1 and 2 of CACI No. 4302. Questions 2 and 3 incorporate the notice requirements set forth in CACI No. 4303, *Sufficiency and Service of Notice of Termination for Failure to Pay Rent*.

In question 4, include “or attempt to pay” if there is evidence that the landlord refused to accept the rent when tendered. (See CACI No. 4327, *Affirmative Defense—Landlord’s Refusal of Rent*.)

If the day of receipt is at issue and any of the three days after the alleged date of receipt falls on a Saturday, Sunday, or judicial holiday, modify questions 2 and 4 to allow the tenant three days excluding weekends and judicial holidays to cure the default.

Code of Civil Procedure section 1174.2(a) provides that the court is to determine the reasonable rental value of the premises in its untenable state to the date of trial. But whether this determination is to be made by the court or the jury is unsettled. Section 1174.2(d) provides that nothing in this section is intended to deny the tenant the right to a trial by jury. Subsection (d) could be interpreted to mean that in a jury trial, wherever the statute says “the court,” it should be read as “the jury.” But the statute also provides that the court may order the landlord to make repairs and correct the conditions of uninhabitability, which would not be a jury function. If the court decides to present this issue to the jury, select “skip question 8 and answer question 9” in the transitional language following question 7, and include question 9.

As noted above, if a breach of habitability is found, the court may order the landlord to make repairs and correct the conditions that constitute a breach. (Code Civ. Proc., § 1174.2(a).) The court might include a special interrogatory asking the jury to identify those conditions that it found to create uninhabitability and the dates on which the conditions existed.

**VF-4302. Termination Due to Violation of Terms of
Lease/Agreement**

We answer the questions submitted to us as follows:

- 1. Did [name of defendant] fail to [insert description of alleged failure to perform] as required by the [lease/rental agreement/sublease]?**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Was [name of defendant]’s failure to [insert description of alleged failure to perform] a substantial breach of [an] important obligation[s] under the [lease/rental agreement/sublease]?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of plaintiff] properly give [name of defendant] a written notice to [either [describe action to correct failure to perform] or] vacate the property at least three days before [date on which action was filed]?**

_____ **Yes** _____ **No**

[If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- [4. Did [name of defendant] [describe action to correct failure to perform] within three days after service or receipt of the notice?]**

_____ **Yes** _____ **No**

Signed: _____

Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

Directions for Use

This verdict form is based on CACI No. 4304, *Termination for Violation of Terms of Lease/Agreement—Essential Factual Elements*. See also the Directions for Use for that instruction. Question 3 incorporates the notice requirements set forth in CACI No. 4305, *Sufficiency and Service of Notice of Termination for Violation of Terms of Agreement*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Include question 4 if the breach can be cured.

If the day of receipt is at issue and any of the three days after the alleged date of receipt falls on a Saturday, Sunday, or judicial holiday, modify questions 3 and 4 to allow the tenant three days excluding weekends and judicial holidays to cure the default.

VF-4400. Misappropriation of Trade Secrets

We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [the owner/a licensee] of [*insert general description of alleged trade secret[s] subject to the misappropriation claim*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Was this/Were these] [*select short term to describe, e.g., information*] secret at the time of the alleged misappropriation?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [this/these] [*e.g., information*] have actual or potential independent economic value because [it was/they were] secret?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] make reasonable efforts under the circumstances to keep the [*e.g., information*] secret?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] [acquire/use [or] disclose] the trade secret[s] by improper means?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s improper [acquisition/use/ [or] disclosure] of the [*e.g., information*] a substantial factor in causing

VF-4400

forth in detail in element 1 of CACI No. 4401. Then in question 2, select a short term to describe the material.

Additional questions may be added depending on whether misappropriation is claimed in question 5 by acquisition, disclosure, or use. See CACI No. 4405, *Misappropriation by Acquisition*, CACI No. 4406, *Misappropriation by Disclosure*, and CACI No. 4407, *Misappropriation by Use*, for additional elements that the jury should find in each kind of case.

Modify the claimed damages in question 7 as appropriate depending on the circumstances. (See CACI No. 4409, *Remedies for Misappropriation of Trade Secret*.) If unjust enrichment is alleged, additional questions on the value of the benefit to the defendant and the defendant's reasonable expenses should be included. (See CACI No. 4410, *Unjust Enrichment*.)

In cases involving more than one trade secret, the jury must answer all of the questions in the verdict form separately for each trade secret at issue.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-4500. Owner's Failure to Disclose Important Information
Regarding Construction Project**

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] submit [*his/her/nonbinary pronoun/its*] bid or agree to perform without information regarding [*e.g., tidal conditions*] that materially affected performance costs?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] have this information?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of defendant*] aware that [*name of plaintiff*] did not know this information and had no reason to obtain it?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] fail to provide this information to [*name of plaintiff*]?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did the contract plans and specifications or other information furnished by [*name of defendant*] to [*name of plaintiff*] either mislead [*him/her/nonbinary pronoun/it*] or fail to put [*him/her/nonbinary pronoun/it*] on notice to investigate further?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

VF-4510. Breach of Implied Covenant to Perform Work in a Good and Competent Manner—Affirmative Defense—Contractor Followed Plans and Specifications

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] fail to [*specify alleged defect in the work and/or deficiency in performance*]?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] harmed by [*name of defendant*]’s failure?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] provide [*name of defendant*] with the plans and specifications for the project?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4, 5, and 6 and answer question 7.

4. Did [*name of plaintiff*] require [*name of defendant*] to follow the plans and specifications in constructing the project?

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip questions 5 and 6 and answer question 7.

5. Did [*name of defendant*] substantially comply with the plans and specifications?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Was [*specify alleged defect in the work and/or deficiency in performance*] because of [*name of defendant*]’s use of the plans and specifications?

_____ Yes _____ No

If your answer to question 6 is yes, stop here, answer no further questions, and have the presiding juror sign and date this form. If you answered no, answer question 7.

7. What are [name of plaintiff]’s damages? \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2015; Revised May 2024

Directions for Use

This verdict form is based on CACI No. 4510, *Breach of Implied Covenant to Perform Work in a Good and Competent Manner—Essential Factual Elements*, and CACI No. 4511, *Affirmative Defense—Contractor Followed Plans and Specifications*. Questions 3–6 address the affirmative defense.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If different categories or items of damages are claimed, expand question 7 so that the jury can state a separate amount for each category. (See CACI Nos. 4530–4532, *Owner’s Damages*.) In this way, should a reviewing court determine that a particular item of damages is not recoverable, it can reduce the judgment by the amount awarded for that item rather than have to send the case back for a retrial of damages.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

VF-4520. Contractor’s Claim for Changed or Extra Work—Owner’s Response That Contract Procedures Not Followed—Contractor’s Claim of Waiver

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] perform [changed/ [or] extra] work that was [not included in/ [or] in addition to that required under] the original contract?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] direct [*name of plaintiff*] to perform this [changed/ [or] extra] work?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of plaintiff*] harmed because [*name of defendant*] required this [changed/ [or] extra] work?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] follow the change-order requirements included in the parties’ contract?

_____ Yes _____ No

If your answer to question 4 is yes, skip question 5 and answer question 6. If you answered no, then answer question 5.

5. Did [*name of defendant*] freely and knowingly give up [his/her/ nonbinary pronoun/its] right to require [*name of plaintiff*] to follow the contract’s change-order requirements?

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]’s damages? \$_____

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2015; Revised May 2024

Directions for Use

This verdict form is based on CACI No. 4520, *Contractor’s Claim for Changed or Extra Work*, CACI No. 4521, *Owner’s Claim That Contract Procedures Regarding Change Orders Were Not Followed*, and CACI No. 4522, *Waiver of Written Approval or Notice Requirements for Changed or Additional Work*. Question 4 addresses the owner’s claim that contract requirements were not followed; question 5 addresses the contractor’s response that the owner waived compliance. Waiver may only be asserted in a private contract case. (*See P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1344 [119 Cal.Rptr.3d 253] [public contract change-order requirements not subject to oral modification or modification by conduct].)

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If different categories or items of damages are claimed, expand question 6 so that the jury can state a separate amount for each category. (See CACI Nos. 4540–4544, *Contractor’s Damages*.) In this way, should a reviewing court determine that a particular item of damages is not recoverable, it can reduce the judgment by the amount awarded for that item rather than have to send the case back for a retrial of damages.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

4603. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5)

[Name of plaintiff] **claims that** *[name of defendant]* **[discharged/[other adverse employment action]] [him/her/nonbinary pronoun] in retaliation for [his/her/nonbinary pronoun] [disclosure of information of/refusal to participate in] an unlawful act. To establish this claim, [name of plaintiff] must prove all of the following are more likely true than not true:**

1. **That** *[name of defendant]* **was** *[name of plaintiff]*'s employer;
2. **[That** *[[name of plaintiff] disclosed/[name of defendant] believed that [name of plaintiff] [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over [name of plaintiff]/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that [specify information disclosed];]*

[or]

[That *[name of plaintiff]* **[provided information to/testified before] a public body that was conducting an investigation, hearing, or inquiry;]**

[or]

[That *[name of plaintiff]* **refused to [specify activity in which plaintiff refused to participate];]**

3. **[That** *[name of plaintiff]* **had reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

[or]

[That *[name of plaintiff]* **had reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

[or]

[That *[name of plaintiff]*'s **participation in [specify activity] would result in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

4. **That** *[name of defendant]* **[discharged/[other adverse employment action]] [name of plaintiff];]**

5. **That** *[[name of plaintiff]*'s **[disclosure of information/refusal to**

[specify]/[name of defendant]’s belief that [name of plaintiff] [had disclosed/might disclose] information] was a contributing factor in [name of defendant]’s decision to [discharge/[other adverse employment action]] [name of plaintiff];

6. That [name of plaintiff] was harmed; and
7. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.

A “contributing factor” is any factor, which alone or in connection with other factors, tends to affect the outcome of a decision. A contributing factor can be proved even when other legitimate factors also contributed to the employer’s decision.

[The disclosure of policies that an employee believes to be merely unwise, wasteful, gross misconduct, or the like, is not protected. Instead, [name of plaintiff] must have reasonably believed that [name of defendant]’s policies violated federal, state, or local statutes, rules, or regulations.]

[It is not [name of plaintiff]’s motivation for [his/her/nonbinary pronoun] disclosure, but only the content of that disclosure, that determines whether the disclosure is protected.]

[A disclosure is protected even though disclosing the information may be part of [name of plaintiff]’s job duties.]

[A disclosure is protected even though the [agency/employer] already knew about the information disclosed.]

New December 2012; Revised June 2013, December 2013; Revoked June 2014; Restored and Revised December 2014; Renumbered from CACI No. 2730 and Revised June 2015; Revised June 2016, November 2019, May 2020, December 2022, May 2023, November 2023

Directions for Use

The whistleblower protection statute of the Labor Code prohibits retaliation against an employee who, or whose family member, discloses information about, or refuses to participate in, an illegal activity. (Lab. Code, § 1102.5(b), (c), (h).) Liability may be predicated on retaliation by “any person acting on behalf of the employer.” (Lab. Code, § 1102.5(a)–(d).) Select any of the optional paragraphs as appropriate to the facts of the case. For claims under Labor Code section 1102.5(c), the plaintiff must show that the activity in question actually would result in a violation of or noncompliance with a statute, rule, or regulation, which is a legal determination that the court is required to make. (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719 [253 Cal.Rptr.3d 404].)

Modifications to the instruction may be required if liability is predicated on an agency theory and the agent is also a defendant. Modifications will also be required

if the retaliation is against an employee whose family member engaged in the protected activity.

Select the first option for elements 2 and 3 for claims based on actual disclosure of information or a belief that plaintiff disclosed or might disclose information. (Cf. *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 648–649 [163 Cal.Rptr.3d 392] [under prior version of statute, no liability for anticipatory or preemptive retaliation based on fear that plaintiff might file a complaint in the future].) Select the second options for providing information to or testifying before a public body conducting an investigation, hearing, or inquiry. Select the third options for refusal to participate in an unlawful activity, and instruct the jury that the court has made the determination that the specified activity would have been unlawful.

Labor Code section 1102.5(b) applies even when an employee discloses information to an employer or agency that already knew about the violation. (*People ex rel. Garcia-Brower v. Kolla's Inc.* (2023) 14 Cal.5th 719, 721 [308 Cal.Rptr.3d 388, 529 P.3d 49].)

“Adverse employment action” is viewed the same as it is under the Fair Employment and Housing Act. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387 [37 Cal.Rptr.3d 113], disapproved on other grounds by *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718 [289 Cal.Rptr.3d 572, 503 P.3d 659]; see CACI No. 2505, *Retaliation—Essential Factual Elements*.) Element 4 may be modified to allege constructive discharge or adverse acts that might not be obviously prejudicial. See CACI No. 2509, “*Adverse Employment Action*” *Explained*, and CACI No. 2510, “*Constructive Discharge*” *Explained*, for instructions that may be adapted for use with this instruction.

The employee must demonstrate by a preponderance of evidence that a protected activity was a contributing factor in the adverse action against the employee. (*Lawson, supra*, 12 Cal.5th at p. 718.) The employer may then attempt to prove by clear and convincing evidence that the action would have been taken anyway for legitimate, independent reasons even if the employee had not engaged in the protected activities. (See Lab. Code, § 1102.6; CACI No. 4604, *Affirmative Defense—Same Decision*.)

Sources and Authority

- Retaliation Against Whistleblower Prohibited. Labor Code section 1102.5.
- “[W]e now clarify that section 1102.6, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims.” (*Lawson, supra*, 12 Cal.5th at p. 712.)
- “By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be ‘demonstrated by a preponderance of the evidence’ that the employee’s protected whistleblowing was a ‘contributing factor’ to an adverse employment action. Then, once the employee has made that necessary threshold showing, the

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employer bears ‘the burden of proof to demonstrate by clear and convincing evidence’ that the alleged adverse employment action would have occurred ‘for legitimate, independent reasons’ even if the employee had not engaged in protected whistleblowing activities.” (*Lawson, supra*, 12 Cal.5th at p. 712, internal citation omitted.)

- “Section 1102.6 prescribes a two-part burden-shifting framework for deciding employee retaliation claims. It states: ‘In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.’ ” (*Zirpel v. Alki David Productions, Inc.* (2023) 93 Cal.App.5th 563, 573 [310 Cal.Rptr.3d 730], internal citation omitted.)
- “In order to prove a claim under section 1102.5(b), the plaintiff must establish a prima facie case of retaliation. It is well-established that such a prima facie case includes proof of the plaintiff’s employment status.” (*Bennett v. Rancho California Water Dist.* (2019) 35 Cal.App.5th 908, 921 [248 Cal.Rptr.3d 21], internal citations omitted.)
- “To prove a claim of retaliation under this statute, the plaintiff ‘must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment.’ ‘Minor or relatively trivial adverse actions by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee do not materially affect the terms or conditions of employment.’ This requirement “ “guards against both “judicial micromanagement of business practices” [citation] and frivolous suits over insignificant slights.” ’ ” (*Francis v. City of Los Angeles* (2022) 81 Cal.App.5th 532, 540–541 [297 Cal.Rptr.3d 362], internal citations omitted.)
- “[T]he purpose of . . . section 1102.5(b) ‘is to “encourag[e] workplace whistleblowers to report unlawful acts without fearing retaliation.” ’ ” (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 923 [180 Cal.Rptr.3d 359].)
- “Once it is determined that the activity would result in a violation or noncompliance with a statute, rule, or regulation, the jury must then determine whether the plaintiff refused to participate in that activity and, if so, whether that refusal was a contributing factor in the defendant’s decision to impose an adverse employment action on the plaintiff.” (*Nejadian, supra*, 40 Cal.App.5th at p. 719.)
- “The question here is whether a report of unlawful activities made to an employer or agency that already knew about the violation is a protected ‘disclosure’ within the meaning of section 1102.5(b). We hold it is.” (*People ex*

rel. Garcia-Brower, supra, 14 Cal.5th at p. 721.)

- “The court erred in failing to distinguish between the disclosure of policies that plaintiff believed to be unwise, wasteful, gross misconduct or the like, which are subject to the [debatable differences of opinion concerning policy matters] limitation, and the disclosure of policies that plaintiff reasonably believed violated federal or state statutes, rules, or regulations, which are not subject to this limitation, even if these policies were also claimed to be unwise, wasteful or to constitute gross misconduct.” (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 847 [136 Cal.Rptr.3d 259], disapproved on other grounds in *People ex rel. Garcia-Brower, supra*, 14 Cal.5th at p. 734.)
- “[I]t is not the *motive* of the asserted whistleblower, but the nature of the communication that determines whether it is covered.” (*Mize-Kurzman, supra*, 202 Cal.App.4th at p. 852, original italics, disapproved on other grounds in *People ex rel. Garcia-Brower, supra*, 14 Cal.5th at p. 734.)
- “[I]f we interpret section 1102.5 to require an employee to go to a different public agency or directly to a law enforcement agency before he or she can be assured of protection from retaliation, we would be encouraging public employees who suspected wrongdoing to do nothing at all. Under the scenario envisioned by the [defendant], if the employee reports his or her suspicions to the agency . . . , he or she will have to suffer any retaliatory conduct with no legal recourse. If the employee reports suspicions to an outside agency or law enforcement personnel, he or she risks subjecting the agency to negative publicity and loss of public support which could ensue without regard to whether the charges prove to be true. At the same time, a serious rift in the employment relationship will have occurred because the employee did not go through official channels within the agency which was prepared to investigate the charges. We see no reason to interpret the statute to create such anomalous results.” (*Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 243 [101 Cal.Rptr.2d 893].)
- “Labor Code section 1102.5, subdivision (b) protects employee reports of unlawful activity by third parties such as contractors and employees, as well [as] unlawful activity by an employer. In support of our conclusion, we note that an employer may have a financial motive to suppress reports of illegal conduct by employees and contractors that reflect poorly on that employer.” (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 471 [152 Cal.Rptr.3d 595], internal citation omitted.)
- “The report of ‘publicly known’ information or ‘already known’ information is distinct from a rule in which only the first employee to report or disclose unlawful conduct is entitled to protection from whistleblower retaliation.” (*Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1548–1553 [176 Cal.Rptr.3d 268], disapproved on other grounds in *Lawson, supra*, 12 Cal.5th at p. 718.)
- “Protection only to the first employee to disclose unlawful acts would defeat the

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legislative purpose of protecting workplace whistleblowers, as employees would not come forward to report unlawful conduct for fear that someone else already had done so. The ‘first report’ rule would discourage whistleblowing. Thus, the [defendant]’s interpretation is a disincentive to report unlawful conduct. We see no such reason to interpret the statute in a manner that would contradict the purpose of the statute.” (*Hager, supra*, 228 Cal.App.4th at p. 1550, disapproved on other grounds in *Lawson, supra*, 12 Cal.5th at p. 718.)

- “Matters such as transferring employees, writing up employees, and counseling employees are personnel matters. ‘To exalt these exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief. Most damagingly, it would thrust the judiciary into micromanaging employment practices and create a legion of undeserving protected “whistleblowers” arising from the routine workings and communications of the job site. . . .’” (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 822 [98 Cal.Rptr.3d 281].)
- “ ‘A wrongful termination action is viable where the employee alleges he [or she] was terminated for reporting illegal activity which could cause harm, not only to the interests of the employer but also to the public.’ ‘An action brought under the whistleblower statute is inherently such an action.’ To preclude a whistleblower from revealing improper conduct by the government based on confidentiality would frustrate the legislative intent underlying the whistleblower statutes. For reasons of public policy, actions against a public entity for claims of discharge from or termination of employment grounded on a whistleblower claim are not barred by governmental immunity.” (*Whitehall v. County of San Bernardino* (2017) 17 Cal.App.5th 352, 365 [225 Cal.Rptr.3d 321], internal citations omitted.)
- “Although [the plaintiff] did not expressly state in his disclosures that he believed the County was violating or not complying with a specific state or federal law, Labor Code section 1102.5, subdivision (b), does not require such an express statement. It requires only that an employee disclose information and that the employee reasonably believe the information discloses unlawful activity.” (*Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592–593 [248 Cal.Rptr.3d 696].)
- “Section 1102.6 requires whistleblower plaintiffs to show that retaliation was a ‘contributing factor’ in their termination, demotion, or other adverse action. This means plaintiffs may satisfy their burden of proving unlawful retaliation even when other, legitimate factors also contributed to the adverse action.” (*Lawson, supra*, 12 Cal.5th at 713–714.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 302–307A, 373, 374

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-A, *Retaliation Under Title VII and FEHA*, ¶ 5:1538 (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.55 et seq. (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, §§ 100.48, 100.60–100.61A (Matthew Bender)

VF-4600. False Claims Act: Whistleblower Protection (Gov. Code, § 12653)

We answer the questions submitted to us as follows:

- 1. Was [name of plaintiff] an employee of [name of defendant]?**

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of plaintiff] [specify acts done in furthering the false claims action or to stop a false claim]?**

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of plaintiff] act [in furtherance of a false claims action/ to stop a false claim]?**

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of defendant] [discharge/specify other adverse action] [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Were [name of plaintiff]'s acts [in furtherance of a false claims action/to stop a false claim] a substantial motivating reason for [name of defendant]'s decision to [discharge/other adverse action] [him/her/nonbinary pronoun]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 6. Was [name of defendant]'s conduct a substantial factor in causing**

VF-4600

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-4601. Protected Disclosure by State Employee—California
Whistleblower Protection Act—Affirmative Defense—Same
Decision (Gov. Code, § 8547.8(c))**

We answer the questions submitted to us as follows:

- 1. Did [name of plaintiff] [specify protected disclosure, e.g., report waste, fraud, abuse of authority, violation of law, threats to public health, bribery, misuse of government property]?**

_____ **Yes** _____ **No**

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 2. Did [name of plaintiff]'s communication [disclose/ [or] demonstrate an intention to disclose] evidence of [an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public]?**

_____ **Yes** _____ **No**

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 3. Did [name of plaintiff] make this communication in good faith [for the purpose of remediating the health or safety condition]?**

_____ **Yes** _____ **No**

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 4. Did [name of defendant] [discharge/other adverse action] [name of plaintiff]?**

_____ **Yes** _____ **No**

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Was [name of plaintiff]'s communication a contributing factor in [name of defendant]'s decision to [discharge/other adverse action] [him/her/nonbinary pronoun]?**

_____ **Yes** _____ **No**

If your answer to question 5 is yes, then answer question 6. If you

VF-4602. Whistleblower Protection—Affirmative Defense of Same Decision (Lab. Code, §§ 1102.5, 1102.6)

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s employer?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of plaintiff]* disclose/*[name of defendant]* believe that *[name of plaintiff]* [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over *[name of plaintiff]*/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that *[specify information disclosed]*?]

[or]

[Did *[name of plaintiff]* [provide information to/testify before] a public body that was conducting an investigation, hearing, or inquiry?]

[or]

[Did *[name of plaintiff]* refuse to *[specify activity in which plaintiff refused to participate]*?]

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [3. [Did *[name of plaintiff]* have reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?]

[or]

[Did *[name of plaintiff]* have reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?]

[or]

[Would *[name of plaintiff]*'s participation in *[specify activity]* result

in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?)

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

- 4. Did [name of defendant] [discharge/other adverse action] [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 5. Was [[name of plaintiff]'s [disclosure of information/refusal to [specify]]/[name of defendant]'s belief that [name of plaintiff] [had disclosed/might disclose] information] a contributing factor in [name of defendant]'s decision to [discharge/other adverse action] [him/her/nonbinary pronoun]?**

_____ Yes _____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 6. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**

_____ Yes _____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 7. Did [name of defendant] prove by clear and convincing evidence that [name of defendant] would have [discharged/other adverse action] [name of plaintiff] anyway at that time for legitimate, independent reasons?**

_____ Yes _____ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

- 8. What are [name of plaintiff]'s damages?**

[a. Past economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other past economic loss	\$_____]
Total Past Economic Damages: \$_____]	

[b. Future economic loss

[lost earnings	\$_____]
[lost profits	\$_____]
[medical expenses	\$_____]
[other future economic loss	\$_____]
Total Future Economic Damages: \$_____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$_____]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$_____]

TOTAL \$_____

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2015; Revised December 2016, May 2020, December 2022, May 2024

Directions for Use

This verdict form is based on CACI No. 4603, *Whistleblower Protection—Essential Factual Elements*, and CACI No. 4604, *Affirmative Defense—Same Decision*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Use the appropriate options in questions 2 and 3 as used for elements 2 and 3 in CACI No. 4603. Omit question 3 entirely, however, if the plaintiff allegedly refused to participate in an activity that would result in a violation or noncompliance with a statute, rule, or regulation. (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719 [253 Cal.Rptr.3d 404].) If the plaintiff allegedly refused to

participate in an activity that would result in a violation or noncompliance with a statute, rule, or regulation, replace “disclosure of information” in question 5 with “refusal to [*specify activity employee refused to participate in and what specific statute, rule, or regulation would be violated by that activity*].”

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. (See Lab. Code, § 1102.6.)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

5009. Predeliberation Instructions

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense and experience in deciding whether testimony is true and accurate. However, during your deliberations, do not make any statements or provide any information to other jurors based on any special training or unique personal experiences that you may have had related to matters involved in this case. What you may know or have learned through your training or experience is not a part of the evidence received in this case.

[Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may [ask to have testimony read back to you] [or] [ask to see any exhibits admitted into evidence that have not already been provided to you].] [Also, jurors/Jurors] may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the [clerk/bailiff/court attendant]. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then, without further

deliberations, make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

New September 2003; Revised April 2004, October 2004, February 2007, December 2009, June 2011, June 2013, May 2019, May 2024

Directions for Use

The advisory committee recommends that this instruction be read to the jury after closing arguments and after reading instructions on the substantive law.

If a special verdict will be used, give CACI No. 5012, *Introduction to Special Verdict Form*. If a general verdict is to be used, give CACI No. 5022, *Introduction to General Verdict Form*.

Judges may want to provide each juror with a copy of the verdict form so that the jurors can use it to keep track of how they vote. Jurors can be instructed that this copy is for their personal use only and that the presiding juror will be given the official verdict form to record the jury's decision. Judges may also want to advise jurors that they may be polled in open court regarding their individual verdicts.

Do not read the bracketed portion of the fifth paragraph that refers to reading back testimony if a court reporter is not being used to record the trial proceedings.

Consider deleting the reference to providing exhibits if the court sends all admitted exhibits into the jury room.

Sources and Authority

- Conduct of Jury Deliberations. Code of Civil Procedure section 613.
- Further Instructions After Deliberation Begins. Code of Civil Procedure section 614.
- Verdict Requires Three Fourths. Code of Civil Procedure section 618, article I, section 16, of the California Constitution.
- Juror Misconduct as Grounds for New Trial. Code of Civil Procedure section 657.
- “Chance is the ‘hazard, risk, or the result or issue of uncertain and unknown conditions or forces.’ Verdicts reached by tossing a coin, drawing lots, or any other form of gambling are examples of improper chance verdicts. ‘The more sophisticated device of the *quotient verdict* is equally improper: The jurors agree to be bound by an *average* of their views; each writes the amount he favors on a slip of paper; the sums are added and divided by 12, and the resulting “quotient” pursuant to the prior agreement, is accepted as the verdict without further deliberation or consideration of its fairness.’ ” (*Chronakis v. Windsor* (1993) 14 Cal.App.4th 1058, 1064 [18 Cal.Rptr.2d 106], original italics.)
- “[T]here is no impropriety in the jurors making an average of their individual

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estimates as to the amount of damages for the purpose of arriving at a basis for discussion and consideration, nor in adopting such average if it is subsequently agreed to by the jurors; but to agree beforehand to adopt such average and abide by the agreement, without further discussion or deliberation, is fatal to the verdict.’ ” (*Chronakis, supra*, 14 Cal.App.4th at p. 1066.)

- Jurors should be encouraged to deliberate on the case. (*Vomaska v. City of San Diego* (1997) 55 Cal.App.4th 905, 911 [64 Cal.Rptr.2d 492].)
- The jurors may properly be advised of the duty to hear and consider each other’s arguments with open minds, rather than preventing agreement by stubbornly sticking to their first impressions. (*Cook v. Los Angeles Ry. Corp.* (1939) 13 Cal.2d 591, 594 [91 P.2d 118].)
- “The trial court properly denied the motion for new trial on the ground that [the plaintiff] did not demonstrate the jury reached a chance or quotient verdict. The jury agreed on a high and a low figure and, before calculating an average, they further agreed to adjust downward the high figure and to adjust upward the low figure. There is no evidence that this average was adopted without further consideration or that the jury agreed at any time to adopt an average and abide by the agreement without further discussion or deliberation.” (*Lara v. Nevitt* (2004) 123 Cal.App.4th 454, 462–463 [19 Cal.Rptr.3d 865].)
- “It is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial. Jurors’ views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work. A juror, however, should not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror’s own claim to expertise or specialized knowledge of a matter at issue is misconduct.” (*In re Malone* (1996) 12 Cal.4th 935, 963 [50 Cal.Rptr.2d 281, 911 P.2d 468].)
- “[The juror]’s comments to the jury, in the nature of an expert opinion concerning the placement of crossing gate ‘sensors,’ their operation, and the consequent reason why gates had not been or could not be installed at the J-crossing, constituted misconduct Speaking with the authority of a professional transportation consultant, [the juror] interjected the subject of ‘sensors,’ on which there had been no evidence at trial.” (*McDonald v. S. Pac. Transp. Co.* (1999) 71 Cal.App.4th 256, 263–264 [83 Cal.Rptr.2d 734].)
- “Jurors cannot, without violation of their oath, receive or communicate to fellow jurors information from sources outside the evidence in the case. ‘[It] is misconduct for a juror during the trial to discuss the matter under investigation outside the court or to receive any information on the subject of the litigation except in open court and in the manner provided by law. Such misconduct *unless shown by the prevailing party to have been harmless will invalidate the verdict.*’ ” (*Smith v. Covell* (1980) 100 Cal.App.3d 947, 952–953 [161 Cal.Rptr. 377], original italics, internal citations omitted.)

- “ ‘All the jurors, including those with relevant personal backgrounds, were entitled to consider this evidence and express opinions regarding it. “[I]t is an impossible standard to require . . . [the jury] to be a laboratory, completely sterilized and freed from any external factors.” [Citation.] “It is ‘virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote.’ ” [Citation.] A juror may not express opinions based on asserted personal expertise that is different from or contrary to the law as the trial court stated it or to the evidence, but if we allow jurors with specialized knowledge to sit on a jury, and we do, we must allow those jurors to use their experience in *evaluating and interpreting* that evidence. Moreover, during the give and take of deliberations, it is virtually impossible to divorce completely one’s background from one’s *analysis* of the evidence. We cannot demand that jurors, especially lay jurors not versed in the subtle distinctions that attorneys draw, never refer to their background during deliberations. “Jurors are not automatons. They are imbued with human frailties as well as virtues.” [Citation.]’ ” (*People v. Allen and Johnson* (2011) 53 Cal.4th 60, 77 [133 Cal.Rptr.3d 548, 264 P.3d 336], original italics.)

Secondary Sources

7 Witkin, California Procedure (6th ed. 2021) Trial, § 275 et seq.

Wegner et al., California Practice Guide: Civil Trials & Evidence, Ch. 15-A, *General Considerations*, ¶ 15:15 et seq. (The Rutter Group)

28 California Forms of Pleading and Practice, Ch. 326, *Jury Instructions*, § 326.30 (Matthew Bender)

1 Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 17, *Dealing With the Jury*, 17.30

California Judges Benchbook: Civil Proceedings—Trial §§ 13.8, 13.32, 13.50, 13.53, 13.59, 14.6, 14.21 (Cal CJER 2019)

5012. Introduction to Special Verdict Form

I will give you [a] verdict form[s] with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form[s] carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict form[s] in the order they appear. After you answer a question, the form tells you what to do next.

At least 9 of you must agree on an answer before you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

All 12 of you must deliberate on and answer each question regardless of how you voted on any earlier question. Unless the verdict form tells all 12 jurors to stop and answer no further questions, every juror must deliberate and vote on all of the remaining questions.

When you have finished filling out the form[s], your presiding juror must write the date and sign at the bottom [of the last page] and then notify the [bailiff/clerk/court attendant].

New September 2003; Revised April 2004, October 2008, December 2009, December 2014, May 2019, May 2024

Directions for Use

This instruction should be given if a special verdict form is used. The second and third paragraphs will have to be modified in a case under the Lanterman-Petris-Short Act. (See CACI No. 4012, *Concluding Instruction* (for LPS Act).)

Sources and Authority

- General and Special Verdict Forms. Code of Civil Procedure section 624.
- Special Verdicts; Requirements for Award of Punitive Damages. Code of Civil Procedure section 625.
- “ ‘The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law.’ (Code Civ. Proc., § 624.)” (*J.P. v. Carlsbad Unified School Dist.* (2014) 232 Cal.App.4th 323, 338 [181 Cal.Rptr.3d 286].)

- “A special verdict is ‘fatally defective’ if it does not allow the jury to resolve every controverted issue.” (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 136 [220 Cal.Rptr.3d 127].)
- “It is true that, in at least some respects, a special verdict—if carefully drawn and astutely employed—may improve the quality of the factfinding process. It can focus the jury’s attention on the relevant questions, incorporating the pertinent legal principles, and guiding the jury away from irrelevant or improper considerations. It can also expose defects in the jury’s deliberations when they occur, providing an opportunity for the court to seek correction through further deliberations.” (*Ryan v. Crown Castle NG Networks, Inc.* (2016) 6 Cal.App.5th 775, 795 [211 Cal.Rptr.3d 743].)
- “ ‘This procedure presents certain problems: “ ‘The requirement that the jury must resolve every controverted issue is one of the recognized pitfalls of special verdicts. “[T]he possibility of a defective or incomplete special verdict, or possibly no verdict at all, is much greater than with a general verdict that is tested by special findings” [Citation.]’ [Citation.]” ‘A special verdict is “fatally defective” if it does not allow the jury to resolve every controverted issue.’ ” (*J.P., supra*, 232 Cal.App.4th at p. 338, internal citations omitted.)
- “All litigation is ultimately a matter of striking a reasonable compromise among competing interests, particularly the interest in resolving cases fairly and that of utilizing public and private resources economically. A special verdict is unlikely to serve either of these objectives unless it is drawn with considerable care.” (*Ryan, supra*, 6 Cal.App.5th at p. 796.)
- “[T]hat the jury instruction . . . defined [the element] did not obviate the necessity of including that required element in the special verdict. ‘A jury instruction alone does not constitute a finding. Nor does the fact that the evidence might support such a finding constitute a finding.’ ” (*Trejo, supra*, 13 Cal.App.5th at p. 138.)
- “When a jury is composed of 12 persons, it is sufficient if *any* nine jurors arrive at each special verdict, regardless of the jurors’ votes on other special verdict questions.” (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 255 [92 Cal.Rptr.3d 862, 206 P.3d 403], original italics.)
- “Appellate courts differ concerning the use of special verdicts. In one case the court said, ‘we should utilize opportunities to force counsel into requesting special verdicts.’ In contrast, a more recent decision included the negative view: ‘Toward this end we advise that special findings be requested of juries only when there is a compelling need to do so. Absent strong reason to the contrary their use should be discouraged.’ Obviously, it is easier to tell after the fact, rather than before, whether the special verdict is helpful in disclosing the jury conclusions leading to the end result.” (*All-West Design, Inc. v. Boozler* (1986) 183 Cal.App.3d 1212, 1221 [228 Cal.Rptr. 736], internal citations omitted.)
- “[W]e begin with the requirement that at least nine of twelve jurors agree that each element of a cause of action has been proved by a preponderance of the

evidence. The elements of a cause of action constitute the essential or ultimate facts in a civil case comparable to the elements of a single, discrete criminal offense in a criminal case. Analogizing a civil ‘cause of action’ to a single, discrete criminal offense, and applying the criminal law jury agreement principles to civil law, we conclude that jurors need not agree from among a number of alternative acts which act is proved, so long as the jurors agree that each element of the cause of action is proved.” (*Stoner v. Williams* (1996) 46 Cal.App.4th 986, 1002 [54 Cal.Rptr.2d 243, footnote omitted].)

- “In civil cases in which there exist multiple causes of action for which multiple or alternative acts could support elements of more than one cause of action, possible jury confusion could result as to whether a specific cause of action is proved. In those cases, . . . we presume that jury instructions may be appropriate to inform the jury that it must agree on specific elements of each specific cause of action. Yet, this still does not require that the jurors agree on exactly how each particular element of a particular cause of action is proved.” (*Stoner, supra*, 46 Cal.App.4th at p. 1002.)
- “[A] juror who dissented from a special verdict finding negligence should not be disqualified from fully participating in the jury’s further deliberations, including the determination of proximate cause. The jury is to determine all questions submitted to it, and when the jury is composed of twelve persons, each should participate as to each verdict submitted to it. To hold that a juror may be disqualified by a special verdict on negligence from participation in the next special verdict would deny the parties of ‘the right to a jury of 12 persons deliberating on all issues.’ Permitting any nine jurors to arrive at each special verdict best serves the purpose of less-than-unanimous verdicts, overcoming minor disagreements and avoiding costly mistrials. Once nine jurors have found a party negligent, dissenting jurors can accept the finding and participate in determining proximate cause just as they may participate in apportioning liability, and we may not assume that the dissenting jurors will violate their oaths to deliberate honestly and conscientiously on the proximate cause issue.” (*Resch v. Volkswagen of America, Inc.* (1984) 36 Cal.3d 676, 682 [205 Cal.Rptr. 827, 685 P.2d 1178], internal citations omitted.)

Secondary Sources

7 Witkin, California Procedure (6th ed. 2021) Trial, § 346

4 California Trial Guide, Unit 91, *Jury Deliberations and Rendition of Verdict*, § 91.21 (Matthew Bender)

27 California Forms of Pleading and Practice, Ch. 318, *Judgments*, § 318.49 (Matthew Bender)

28 California Forms of Pleading and Practice, Ch. 326A, *Jury Verdicts*, § 326A.11[3] (Matthew Bender)

1 Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 18, *Jury Verdicts*, 18.11 et seq.

California Judges Benchbook: Civil Proceedings—Trial § 14.14 (Cal CJER 2019)

VF-5000. General Verdict Form—Single Plaintiff—Single Defendant—Single Cause of Action

Select one of the following two options:

_____ **We find in favor of** [*name of plaintiff*] **and against** [*name of defendant*] **and award damages to** [*name of plaintiff*] **in the amount of \$**_____.

_____ **We find in favor of** [*name of defendant*] **and against** [*name of plaintiff*].

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

VF-5001. General Verdict Form—Single Plaintiff—Single Defendant—Multiple Causes of Action

For each claim, select one of the two options listed.

On [name of plaintiff]’s claim for [insert first cause of action]

_____ **we find in favor of [name of plaintiff] and against [name of defendant].**

_____ **we find in favor of [name of defendant] and against [name of plaintiff].**

On [name of plaintiff]’s claim for [insert second cause of action]

_____ **we find in favor of [name of plaintiff] and against [name of defendant].**

_____ **we find in favor of [name of defendant] and against [name of plaintiff].**

Complete the section below only if you find in favor of [name of plaintiff] on at least one of [his/her/nonbinary pronoun/its] claims.

We award [name of plaintiff] the following damages: \$_____.

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New September 2003; Revised December 2010, May 2024

Directions for Use

Use of a special verdict form is recommended when there are different measures of damages for the different causes of action.