Judicial Council of California

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INVITATION TO COMMENT

CACI 26-02

Civil Jury Instructions: Revisions to *Judicial Council of California Civil Jury Instructions*

Invitation to Comment Details

Proposed Rules, Forms, Standards, or Statutes
Jury instructions and verdict forms

Proposed by
Advisory Committee on Civil Jury Instruction
Hon. Adrienne M. Grover, Chair

Action Requested
Review and Submit Comments by September 11, 2026, to invitations@jud.ca.gov

Proposed Effective Date
December 11, 2026

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov

(This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.)

Executive Summary and Origin

The Advisory Committee on Civil Jury Instructions seeks public comment on proposed revisions and additions to the *Judicial Council of California Civil Jury Instructions* (*CACI*). Under California Rules of Court, rule 10.58, the advisory committee is responsible for regularly reviewing case law and statutes affecting jury instructions and making recommendations to the Judicial Council for updating, revising, and adding topics to the council's civil jury instructions. On approval by the Judicial Council, all changes will be published in the 2027 edition of the official *CACI* publication.

Attachments and Links

1. Table of contents, Civil Jury Instructions Invitation to Comment (CACI 26-02), at page 2
2. Proposed new and revised instructions and verdict forms, at pages 3–36

CIVIL JURY INSTRUCTIONS
INVITATION TO COMMENT (CACI 26-02)
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451. Affirmative Defense—Contractual Assumption of Risk

[*Name of defendant*] claims that [*name of plaintiff*] may not recover any damages because [he/she/*nonbinary pronoun*] agreed before the incident that [he/she/*nonbinary pronoun*] would not hold [*name of defendant*] responsible for any damages.

If [*name of defendant*] proves that there was such an agreement and that it applies to [*name of plaintiff*]'s claim, then [*name of defendant*] is not responsible for [*name of plaintiff*]'s harm[, unless you find that [*name of defendant*] ~~was grossly negligent or intentionally harmed [*name of plaintiff*]~~[*specify alleged ground(s) for invalidating agreement*]].

[If you find that [*name of defendant*] ~~was grossly negligent or intentionally harmed [*name of plaintiff*]~~[*insert same ground(s)*], then the agreement does not apply. You must then determine whether [he/she/*nonbinary pronoun*/it] is responsible for [*name of plaintiff*]'s harm based on the other instructions that I have given you.]

New September 2003; Revised December 2011, December 2026

Directions for Use

This instruction sets forth the affirmative defense of express or contractual assumption of risk. (See *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 856 [120 Cal.Rptr.3d 90].) It will be given in very limited circumstances. Both the interpretation of a waiver agreement and application of its legal effect are generally resolved by the judge before trial. The existence of a duty is a question of law for the court (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 719 [183 Cal.Rptr.3d 234]), as is the interpretation of a written instrument if the interpretation does not turn on the credibility of extrinsic evidence. (*Allabach v. Santa Clara County Fair Assn., Inc.* (1996) 46 Cal.App.4th 1007, 1011 [54 Cal.Rptr.2d 330].)

However, there may be contract law defenses (such as fraud, lack of consideration, duress, unconscionability) that could be asserted by the plaintiff to contest the validity of a waiver. If these defenses depend on disputed facts that must be considered by a jury, then this instruction should also be given along with any relevant instructions related to contract formation.

Insert the alleged grounds for invalidating the agreement in the second and third paragraph. Express assumption of risk does not relieve the defendant of liability if ~~there was~~ defendant committed certain aggravated misconduct, specifically gross negligence ~~or~~ , recklessness or willful injury, fraud, or violation of a specific statutory duty affecting public safety. (~~See~~ Civ. Code, § 1668; *Whitehead v. City of Oakland* (2025) 17 Cal.5th 735, 750 [332 Cal.Rptr.3d 134, 567 P.3d 701] [violation of a specific statutory duty to ensure safety of public roadway]; *New England Country Foods, LLC v. VanLaw Food Products, Inc.* (2025) 17 Cal.5th 703, 718 [331 Cal.Rptr.3d 890, 567 P.3d 63] [willful injury to the person or property of another]; *Epochal Enters., Inc. v. LF Encinitas Props., LLC* (2024) 99 Cal.App.5th 44, 60 [317 Cal.Rptr.3d 573, 586] [violation of hazardous disclosure statutes]; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777 [62 Cal.Rptr.3d 527, 161 P.3d 1095] [gross negligence].) ~~However~~Even if express assumption of the risk does not relieve the defendant of liability, the doctrine of primary assumption of risk may ~~then become~~ be relevant, requiring additional instructions (e.g., CACI Nos. 470, et seq.) if an inherently dangerous sport or recreational activity is involved. (See *Rosencrans v.*

Dover Images, Ltd. (2011) 192 Cal.App.4th 1072, 1081 [122 Cal.Rptr.3d 22].)

If there are jury issues with regard to ~~gross negligence~~ the applicability of section 1668 or the alleged grounds for invalidating the agreement, ~~include the bracketed language on gross negligence~~ give the final bracketed paragraph. Also give CACI No. 425, *"Gross Negligence" Explained*, CACI No. 335, *Affirmative Defense—Fraud*, or other appropriate instructions related to contract formation, and, for example, CACI No. 418, *Presumption of Negligence Per Se*. ~~If the jury finds no gross negligence, then the action is barred by express assumption of risk unless there are issues of fact with regard to contract formation.~~

Sources and Authority

- Contract Releasing Party From Liability for Fraud or Willful Injury is Against Public Policy. Civil Code section 1668.

- "[P]arties may contract for the release of liability for future ordinary negligence so long as such contracts do not violate public policy. 'A valid release precludes liability for risks of injury within the scope of the release.' " (*Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 877 [208 Cal.Rptr.3d 792], internal citations omitted.)

- "With respect to the question of express waiver, the legal issue is *not* whether the particular risk of injury appellant suffered is inherent in the recreational activity to which the Release applies [citations], but simply *the scope of the Release*." (*Hass v. RhodyCo Productions* (2018) 26 Cal.App.5th 11, 27 [236 Cal.Rptr.3d 682], original italics.)

- "Express assumption occurs when the plaintiff, in advance, expressly consents ... to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone. ... The result is that ... being under no duty, [the defendant] cannot be charged with negligence." (*Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 764 [276 Cal.Rptr. 672], internal citations omitted.)

- "While often referred to as a defense, a release of future liability is more appropriately characterized as an express assumption of the risk that negates the defendant's duty of care, an element of the plaintiff's case." (*Eriksson, supra,* 233 Cal.App.4th at p. 719.)

- "[C]ases involving express assumption of risk are concerned with instances in which, as the result of an express agreement, the defendant owes no duty to protect the plaintiff from an injury-causing risk. Thus in this respect express assumption of risk properly can be viewed as analogous to primary assumption of risk." (*Knight v. Jewett* (1992) 3 Cal.4th 296, 308–309, fn. 4 [11 Cal.Rptr.2d 2, 834 P.2d 696].)

- " ' "It is only necessary that the act of negligence, which results in injury to the releaser, be reasonably related to the object or purpose for which the release is given." ' … 'An act of negligence is reasonably related to the object or purpose for which the release was given if it is included within the express scope of the release.' " (*Eriksson, supra,* 233 Cal.App.4th at p. 722.)

- ~~"Although [decedent] could not release or waive her parents' subsequent wrongful death claims, it is~~

~~well settled that a release of future liability or express assumption of the risk by the decedent may be asserted as a defense to such claims." (*Eriksson, supra,* 233 Cal.App.4th at p. 725.)~~

- "[E]xculpatory clause which affects the public interest cannot stand." (*Tunkl v. Regents of Univ. of California* (1963) 60 Cal.2d 92, 98 [32 Cal.Rptr. 33, 383 P.2d 441].)

- "In *Tunkl,* our high court identified six characteristics typical of contracts affecting the public interest: ' "[1] It concerns a business of a type generally thought suitable for public regulation. [2] The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. [3] The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least any member coming within certain established standards. [4] As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. [5] In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence. [6] Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents." ' Not all of these factors need to be present for an exculpatory contract to be voided as affecting the public interest." (*Hass, supra,* 26 Cal.App.5th at p. 29, internal citations omitted.)

- "[W]e conclude that an agreement to exculpate a party for future violations of a statutory duty designed to protect public safety is against the policy of the law under Civil Code section 1668 and is not enforceable." (*Whitehead, supra,* 17 Cal.5th at p. 742.)

- "The issue [of whether something is in the public interest] is tested *objectively*, by the activity's importance to the *general public*, not by its subjective importance to the particular plaintiff." (*Booth v. Santa Barbara Biplane Tours, LLC* (2008) 158 Cal.App.4th 1173, 1179–1180 [70 Cal.Rptr.3d 660], original italics.)

- "[P]ublic policy generally precludes enforcement of an agreement that would remove an obligation to adhere to even a *minimal* standard of care. Applying that general rule here, we hold that an agreement purporting to release liability for future gross negligence committed against a developmentally disabled child who participates in a recreational camp designed for the needs of such children violates public policy and is unenforceable." (*City of Santa Barbara*, *supra,* ~~*v. Superior Court* (2007)~~ 41 Cal.4th ~~747,~~ at p. 777 ~~[62 Cal.Rptr.3d 527, 161 P.3d 1095]~~, original italics.)

- " ' "[A] purveyor of recreational activities owes a duty to a patron not to increase the risks inherent in the activity in which the patron has paid to engage." ' " Thus, in cases involving a waiver of liability for future negligence, courts have held that conduct that substantially or unreasonably increased the inherent risk of an activity or actively concealed a known risk could amount to gross negligence, which would not be barred by a release agreement." (*Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC* (2018) 25 Cal.App.5th 344, 359 [235 Cal.Rptr.3d 716].)

- " ' "A written release may exculpate a tortfeasor from future negligence or misconduct. [Citation.] To be effective, such a release '*must be clear, unambiguous, and explicit in expressing the intent of the* *subscribing parties*.' [Citation.] The release need not achieve perfection. [Citation.] Exculpatory agreements in the recreational sports context do not implicate the public interest and therefore are not void as against public policy. [Citations.]" ' ' "An ambiguity exists when a party can identify an alternative, semantically reasonable, candidate of meaning of a writing. [Citations.]" ' " (*Huverserian v. Catalina Scuba Luv, Inc.* (2010) 184 Cal.App.4th 1462, 1467 [110 Cal.Rptr.3d 112], original italics, internal citations omitted.)

- "Unlike claims for ordinary negligence, products liability claims cannot be waived." (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 640 [184 Cal.Rptr.3d 155].)

- "Since there is no disputed issue of material fact concerning gross negligence, the release also bars [plaintiff]'s cause of action for breach of warranty." (*Grebing, supra,* 234 Cal.App.4th at p. 640.)

- "Generally, a person who signs an instrument may not avoid the impact of its terms on the ground that she failed to read it before signing. However, a release is invalid when it is procured by misrepresentation, overreaching, deception, or fraud. 'It has often been held that if the releaser was under a misapprehension, not due to his own neglect, as to the nature or scope of the release, and if this misapprehension was induced by the misconduct of the releasee, then the release, regardless of how comprehensively worded, is binding only to the extent actually intended by the releaser.' 'In cases providing the opportunity for overreaching, the releasee has a duty to act in good faith and the releaser must have a full understanding of his legal rights. [Citations.] Furthermore, it is the province of the jury to determine whether the circumstances afforded the opportunity for overreaching, whether the releasee engaged in overreaching and whether the releaser was misled. [Citation.]' A 'strong showing of misconduct' by the plaintiff is not necessary to demonstrate the existence of a triable issue of fact here; only a 'slight showing' is required." (*Jimenez v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 563−564 [188 Cal.Rptr.3d 228], internal citations omitted.)

- "Plaintiffs assert that Jerid did not 'freely and knowingly' enter into the Release because (1) the [defendant's] employee represented the Release was a sign-in sheet; (2) the metal clip of the clipboard obscured the title of the document; (3) the Release was written in a small font; (4) [defendant] did not inform Jerid he was releasing his rights by signing the Release; (5) Jerid did not know he was signing a release; (6) Jerid did not receive a copy of the Release; and (7) Jerid was not given adequate time to read or understand the Release. [¶] We do not find plaintiffs' argument persuasive because … there was nothing preventing Jerid from reading the Release. There is nothing indicating that Jerid was prevented from (1) reading the Release while he sat at the booth, or (2) taking the Release, moving his truck out of the line, and reading the Release. In sum, plaintiffs' arguments do not persuade us that Jerid was denied a reasonable opportunity to discover the true terms of the contract." (*Rosencrans, supra,* 192 Cal.App.4th at pp. 1080–1081.)

- "Whether a contract provision is clear and unambiguous is a question of law, not of fact." (*Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 598 [250 Cal.Rptr. 299].)

- "By signing as [decedent]'s parent, [plaintiff] approved of the terms of the release and understood that her signature made the release 'irrevocable and binding.' Under these circumstances, the release could not be disaffirmed. [¶] Although [plaintiff]'s signature prevented the agreement from being disaffirmed, it does not make her a party to the release." (*Eriksson, supra,* 233 Cal.App.4th at p. 721.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1439, 1449–1451

California Tort Guide (Cont.Ed.Bar 3d ed.) § 1.44

1 Levy et al., California Torts, Ch. 4, *Comparative Negligence, Assumption of the Risk, and Related Defenses*, § 4.03 (Matthew Bender)

4 California Trial Guide, Unit 90, *Closing Argument*, § 90.90 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.171 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.402 (Matthew Bender)

712. Affirmative Defense—Failure to Wear a Seat Belt

[*Name of defendant*] claims that [*name of plaintiff*] was negligent because [he/she/*nonbinary pronoun*] failed to wear a seat belt. To succeed, [*name of defendant*] must prove all of the following:

1. **That a working seat belt was available;**

2. **That a reasonably careful person in [*name of plaintiff*]'s situation would have used the seat belt;**

3. **That [*name of plaintiff*] failed to wear a seat belt; and**

4. **That [*name of plaintiff*]'s injuries would have been avoided or less severe if [he/she/*nonbinary pronoun*] had used the seat belt.**

[In deciding whether a reasonably careful person would have used a seat belt, you may consider Vehicle Code section 27315, which states: [*insert pertinent provision*].]

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*New September 2003; Revised October 2008, December 2026**

Directions for Use

~~Note that t~~The Motor Vehicle Safety Act (Veh. Code, § 27315) applies ~~only~~ to persons 16 years or older and passengers 8 years and older in certain circumstances. (Compare Veh. Code, § 27315(d)(1), (e) with § 27315(d)(2) & (3).) ~~No case law regarding whether persons under 16 can be found comparatively negligent for failing to wear a seat belt has been found.~~ For an instruction on the standard of care for minors, see CACI No. 402, *Standard of Care for Minors*.

Modify the introductory sentence, elements 2–4, and the final bracketed sentence (if included) as appropriate if the defendant alleges that the plaintiff wore a seat belt but was not properly restrained. (See Veh. Code, § 27315(c)(2), (d), (e).)

Sources and Authority

- ~~Failure to Wear Seat Belt as Negligence~~Certain Violations Do Not Establish Negligence as a Matter of Law or Negligence Per Se for Comparative Fault Purposes; Negligence May Be Proven as a Fact Without Regard to the Violation. Vehicle Code section 27315(i).

- "Defendants ... are required to prove two issues of fact: (1) the defendant must show whether in the exercise of ordinary care the plaintiff should have used the seat belt which was available to him. ... (2) The defendant must show what the consequence to the plaintiff would have been had seat belts been used." (*Franklin v. Gibson* (1982) 138 Cal.App.3d 340, 343 [188 Cal.Rptr. 23].)

- "Upon a retrial the court or jury will determine whether in the exercise of ordinary care [plaintiff] should have used the seat belt; expert testimony will be required to prove whether [plaintiff] would have been injured, and, if so, the extent of the injuries he would have sustained if he had been using the seat belt ... .” (*Truman v. Vargas* (1969) 275 Cal.App.2d 976, 983 [80 Cal.Rptr. 373].)

- ~~In *Housley v. Godinez* (1992) 4 Cal.App.4th 737, 747 [6 Cal.Rptr.2d 111], the court approved of the following jury instruction, which was read in addition to section 27315:~~ “The Defendants have raised the seat belt defense in this case. First, you must decide whether in the exercise of ordinary care, the Plaintiff should have used seat belts, if available to him. Second you must determine with expert testimony the nature of injuries and damages Plaintiff would have sustained if he had used seat belts.” ~~In~~ (*Housley v. Godinez* (1992) 4 Cal.App.4th 737, 747 [6 Cal.Rptr.2d 111] [~~, the court~~ approving~~ed~~ of ~~the following~~ jury instruction, which was read in addition to section 27315~~:~~].)

- “[Section 27315] permits the civil trial courts to instruct on the existence of the seat belt statute in appropriate cases, while allowing the jury to decide what weight, if any, to give the statute in determining the standard of reasonable care.” (*Housley, supra,* 4 Cal.App.4th at p. 747.)

- “[N]othing in the statute prohibits a jury from knowing and considering its very existence when determining the reasonableness of driving without a seat belt.” (*Housley, supra,* 4 Cal.App.4th at p. 744.)

- “There was evidence presented that appellant’s failure to wear a seat belt worsened his injuries. The foreseeability test clearly eliminates this act as a supervening cause because it is the general likelihood of the type of injury that must be unforeseeable in order to absolve defendant; the extent of injury need not be foreseeable.” (*Hardison v. Bushnell* (1993) 18 Cal.App.4th 22, 28 [22 Cal.Rptr.2d 106].)

- “Expert testimony is not always required to prove that failure to use a seat belt may cause at least some, if not all, of plaintiff's claimed injuries. [¶] Depending on the facts of the case, expert testimony may be necessary for the jury to distinguish the injuries that [plaintiff] unavoidably sustained in the collision from the injuries he could have avoided if he had worn a seat belt.” (*Lara v. Nevitt* (2004) 123 Cal.App.4th 454, 458–459 [19 Cal.Rptr.3d 865], internal citation omitted.)

- “The seat belt defense does not depend on a Vehicle Code violation nor is it eviscerated by a Vehicle Code exemption from the requirement to wear seat belts.” (*Lara, supra,* 123 Cal.App.4th at p. 461 fn. 3.)

Secondary Sources

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.71

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.05[2] (Matthew Bender)

8 California Forms of Pleading and Practice, Ch. 82, *Automobiles: Causes of Action*, § 82.10 (Matthew Bender)

California Civil Practice: Torts § 25:26 (Thomson Reuters)

2548. Disability Discrimination—Refusal to Make Reasonable Accommodation in Housing (Gov. Code, § 12927(c)(1))

[*Name of plaintiff*] claims that [*name of defendant*] refused to reasonably accommodate [his/her/*nonbinary pronoun*] [*select term to describe basis of limitations, e.g., physical disability*] as necessary to afford [him/her/*nonbinary pronoun*] an equal opportunity to use and enjoy a dwelling. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] was the [*specify defendant's source of authority to provide housing, e.g., owner*] of [a/an] [*specify nature of housing at issue, e.g., apartment building*];**

2. **That [*name of plaintiff*] [sought to rent/was living in/[*specify other efforts to obtain housing*]] the [*e.g., apartment*];**

3. **That [*name of plaintiff*] had [a history of having] [a] [*e.g., physical disability*] [that limited [*insert major life activity*]];**

4. **That [*name of defendant*] knew of, or should have known of, [*name of plaintiff*]'s [history of having a] disability;**

5. **That in order to afford [*name of plaintiff*] an equal opportunity to use and enjoy the [*e.g., apartment*], it was necessary to [*specify accommodation required*];**

6. **That it was reasonable to [*specify accommodation*];**

7. **That [*name of defendant*] refused to make this accommodation.**

New May 2017; Revised May 2020, December 2025, December 2026*

Directions for Use

This instruction is for use in a case alleging discrimination in housing based on a failure to reasonably accommodate a disability. Under the Fair Employment and Housing Act, "discrimination" includes the "refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." (Gov. Code, § 12927(c)(1).)

In the introductory paragraph, select a term 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." Use the term in element 3.

In element 2, if the plaintiff encountered a barrier before actually submitting an application, such as discovering a policy that would make it impossible to live in the unit, specify what the plaintiff did to obtain the housing.

In ~~element 3~~elements 3 and 4, 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.

~~Modify element 3 if the plaintiff did not have a disability or a history of disability but alleges denial of accommodation because the plaintiff was perceived to have a disability or to be associated with someone who has, or is perceived to have, a disability.~~ As appropriate, modify elements 3 and 4 if the reasonable accommodation in housing claim involves being regarded as disabled or an association with someone who has or is perceived to have a disability. The Government Code defines both mental disability and physical disability to include having a record or history of having a disability, as well as a perception that the person has a disability, or that the person is associated with a person who has, or is perceived to have, a disability. (Gov. Code, §§ 12955.3 [disability includes, but is not limited to, any physical or mental disability as defined in section 12926]; 12926(o) [disability includes a combination of characteristics, perception that a person has a disability, and perception that the person is associated with a person who has, or is perceived to have, a disability]; see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer or other entity].)

In element 5, explain the accommodation in rules, policies, practices that is alleged to be needed.

Sources and Authority

- "Discrimination" Defined Regarding Housing Disability Accommodations. Government Code section 12927(c)(1).

- "Disability" Defined for Housing Discrimination. Government Code section 12955.3.

- "Housing Accommodation" Defined. Government Code section 12927(d).

- " 'FEHA in the housing area is thus intended to conform to the general requirements of federal law in the area and may provide greater protection against discrimination.' In other words, the FHA provides a minimum level of protection that FEHA may exceed. Courts often look to cases construing the FHA, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 when interpreting FEHA." (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1591 [18 Cal.Rptr.3d 669], internal citations omitted.)

- "[T]he basic principles applicable in employment cases should also apply in the housing context." (*Brown v. Smith* (1997) 55 Cal.App.4th 767, 782 [64 Cal.Rptr.2d 301].)

- "In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p.1592.)

- "FEHA prohibits, as unlawful discrimination, a 'refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.' 'In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation.' " (*Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1051 [188 Cal.Rptr.3d 537], internal citation omitted.)

- "We note that, currently, section 12955.3 explicitly states that 'disability' includes 'any physical or mental disability as defined in Section 12926.' That statute in turn defines 'mental disability' to include "any mental or psychological disorder or condition … that limits a major life activity', that is, 'makes the achievement of the major life activity difficult.' 'Major life activities' is to be broadly construed, and includes 'physical, mental, and social activities and working.' " (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1592, internal citations omitted.)

- " 'If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.' This obligation to 'open a dialogue' with a party requesting a reasonable accommodation is part of an interactive process in which each party seeks and shares information." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1598, internal citation omitted.)

- "This evidence established the requisite causal link between the [defendant]'s no-pets policy and the interference with the [plaintiffs]' use and enjoyment of their condominium." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1593.)

- "When the reasons for a delay in offering a reasonable accommodation are subject to dispute, the matter is left for the trier of fact to resolve. The administrative law judge properly characterized this lengthy delay as a refusal to provide reasonable accommodation." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1599, internal citation omitted.)

- "We reiterate that the FEHC did not rule that companion pets are always a reasonable accommodation for individuals with mental disabilities. Each inquiry is fact specific and requires a case-by-case determination." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1593.)

Secondary Sources

Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1073–1076

7 California Real Estate Law and Practice, Ch. 214, *Government Regulation and Enforcement*, § 214.41 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 117, *Civil Rights: Housing Discrimination*, § 117.14 (Matthew Bender)

2590. Reasonable Accommodation for Workplace Safety for Victim of Qualifying Act of Violence—Essential Factual Elements (Gov. Code, § 12945.8)

[*Name of plaintiff*] claims that [*name of defendant*] failed to reasonably accommodate [his/her/*nonbinary pronoun*] safety while at work. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] was an employee of [*name of defendant*];**

2. **That [*name of plaintiff*]/[his/her/*nonbinary pronoun*] family member] was a victim of [*specify qualifying act of violence*];**

3. **That [*name of plaintiff*] disclosed to [*name of defendant*] that [[he/she/*nonbinary pronoun*]/[his/her/*nonbinary pronoun*] family member] was a victim of [*specify qualifying act of violence*];**

4. **That [*name of plaintiff*] requested an accommodation for [his/her/*nonbinary pronoun*] safety while at work;**

5. **That [*name of defendant*] failed to provide reasonable accommodation for [*name of plaintiff*]'s safety while at work;**

6. **That [*name of plaintiff*] was harmed; and**

7. **That [*name of defendant*]'s failure to provide reasonable accommodation was a substantial factor in causing [*name of plaintiff*]'s harm.**

New December 2026

Directions for Use

Modify the instruction if there is a factual dispute as to whether the act is a qualifying act of violence or whether the plaintiff's family member meets the definition under the statute.

For an instruction defining "reasonable accommodation" in this context, see CACI No. 2591, *Workplace Safety for Victim of Qualifying Act of Violence—"Reasonable Accommodation" Explained*. For an instruction on undue hardship in this context, see CACI No. 2592, *Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense—Undue Hardship*.

Sources and Authority

- Employer's Duty to Provide Reasonable Accommodation. Government Code section 12945.8(e)(1).

- "Employer" Defined. Government Code section 12945.8(j)(3).

- "Family Member" Defined. Government Code section 12945.8(j)(4).
- "Victim" Defined. Government Code section 12945.8(j)(8).
- "Qualifying Act of Violence" Defined. Government Code section 12945.8(j)(5).

Secondary Sources

2591. Workplace Safety for Victim of Qualifying Act of Violence—"Reasonable Accommodation" Explained

A reasonable accommodation is a reasonable change to the workplace for the safety of the employee while at work.

Reasonable accommodations may include measures such as:

a. A job transfer or reassignment;

b. Changed job responsibilities, work schedules, or work stations;

c. A changed work telephone number;

d. Permission to carry a telephone at work;

e. An installed lock;

f. Assistance in documenting violence that occurs in the workplace;

g. Implemented safety procedures;

h. Referral to a victim assistance organization; or

i. Another adjustment to job structure, workplace facility, or work requirements.

You must determine whether the employer's accommodation(s) was or were reasonable under the circumstances.

New December 2026

Directions for Use

Give this instruction to explain "reasonable accommodation" as used in CACI No. 2590, *Reasonable Accommodation for Workplace Safety for Victim of Qualifying Act of Violence—Essential Factual Elements*.

Sources and Authority

- Employer's Obligation to Make Reasonable Accommodation. Government Code section 12945.8(e)(1).
- "Reasonable Accommodation" Defined. Government Code section 12945.8(e)(2).
- Employer's Obligation to Consider Exigent Circumstances. Government Code section 12945.8(e)(5).

Secondary Sources

2592. Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense—Undue Hardship

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[*Name of defendant*] claims that accommodating [*name of plaintiff*]'s safety request would have created an undue hardship to the operation of [*name of defendant*]'s business.

To succeed on this defense, [*name of defendant*] must prove that [an] accommodation[s] would have created an undue hardship either because it would have violated the employer's duty to provide and maintain a place of employment that is safe and healthful for all employees or because it would have been 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 December 2026

Directions for Use

In addition to the hardship factors identified in Government Code section 12926, an undue hardship under the statute includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by section 6400 of the Labor Code. (Gov. Code, § 12945.8(e)(6).)

Sources and Authority

- Employer's Duty to Provide Reasonable Accommodation. Government Code section 12945.8(e)(1).
- Employer's Duty to Furnish Safe and Healthful Place of Employment. Labor Code section 6400.
- "Undue Hardship" Defined. Government Code sections 12926(u), 12945.8(e)(6).

Secondary Sources

2721. Affirmative Defense—Nonpayment of Overtime—Administrative Exemption

[*Name of defendant*] claims that [he/she/*nonbinary pronoun*/it] is not required to pay [*name of plaintiff*] for overtime because [*name of plaintiff*] is an administrative employee. [*Name of plaintiff*] is exempt from overtime pay requirements as an administrator if [*name of defendant*] proves all of the following:

1. **[*Name of plaintiff*]'s duties and responsibilities involve the performance of office or nonmanual work directly related to management policies or general business operations of [*name of defendant*] or [*name of defendant*]'s customers;**

2. **[*Name of plaintiff*] customarily and regularly exercises discretion and independent judgment;**

3. **[[*Name of plaintiff*] performs, under general supervision only, specialized or technical work that requires special training, experience, or knowledge;]**

   [*or*]

   [[*Name of plaintiff*] regularly and directly assists a proprietor or a bona fide executive or administrator;]

   [*or*]

   [[*Name of plaintiff*] performs special assignments and tasks under general supervision only;]

4. **More than half of the time, [*name of plaintiff*] performs administrative duties that meet the test of the exemption; and**

5. **[*Name of plaintiff*]'s monthly salary is at least [*insert amount that is twice the state minimum wage for full time employment*].**

In determining whether [*name of plaintiff*] spends more than half of [his/her/*nonbinary pronoun*] time performing administrative duties that meet the test of the exemption, the most important consideration is how [he/she/*nonbinary pronoun*] actually spends [his/her/*nonbinary pronoun*] time. But also consider whether [*name of plaintiff*]'s practice differs from [*name of defendant*]'s realistic expectations of how [*name of plaintiff*] should spend [his/her/*nonbinary pronoun*] time and the realistic requirements of the job.

[*Define the administrative duties that meet the test of the exemption.*]

[Each of [*name of plaintiff*]'s activities is either an exempt or a nonexempt activity depending on the primary purpose for which [he/she/*nonbinary pronoun*] undertook it at that time. Time spent on an activity is either exempt or nonexempt, not both.]

New December 2012; Revised June 2014, December 2025, December 2026

Directions for Use

This instruction is an affirmative defense to an employee's claim for statutory overtime earnings. (See CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements*.) The employer claims that the employee is an exempt administrator. (See Lab. Code, § 515(a).) The employer must prove all of the elements. (*Eicher v. Advanced Business Integrators, Inc*. (2007) 151 Cal.App.4th 1363, 1372 [61 Cal.Rptr.3d 114].) For an instruction for the affirmative defense of executive exemption, see CACI No. 2720, *Affirmative Defense—Nonpayment of Overtime—Executive Exemption.*

This instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry. (See 8 Cal. Code Regs., § 11090.) Different wage orders are applicable to different industries. (See Lab. Code, § 515.) The requirements of the administrative exemptions under the various wage orders are essentially the same. (Cf., e.g., 8 Cal. Code Regs., § 11040, Wage Order 4, applicable to persons employed in professional, technical, clerical, mechanical, and similar occupations.)

The exemption requires that the employee be "primarily engaged in duties that meet the test of the exemption." (See 8 Cal. Code Regs., § 11090 sec. 1(A)(2)(f), sec. 2(J) ("primarily" means more than one-half the employee's work time).) This requirement is expressed in element 4. However, the contours of administrative duties are quite detailed in the wage orders, which incorporate federal regulations under the Fair Labor Standards Act and also provide some specific examples. (See also *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 802 [85 Cal.Rptr.2d 844, 978 P.2d 2].) Provide as appropriate details from the applicable wage order, regulations, or other sources as to what "administrative duties" meet the test of the exemption in the paragraph following the elements. In many cases, it also will be advisable to instruct on the meaning of "directly related" (element 1).

Include the optional last paragraph if a particular work activity arguably involves more than one purpose and could be characterized as exempt or nonexempt, depending on its primary purpose.

This instruction may be expanded to provide examples of the specific exempt and nonexempt activities relevant to the work at issue. (See, e.g., *Heyen v. Safeway, Inc.* (2013) 216 Cal.App.4th 795, 808−809 [157 Cal.Rptr.3d 280].)

Sources and Authority

- Exemptions to Overtime Requirements. Labor Code section 515(a).
- "[T]he assertion of an exemption from the overtime laws is considered to be an affirmative defense, and therefore the employer bears the burden of proving the employee's exemption." (*Ramirez, supra,* 20 Cal.4th at pp. 794–795.)
- "In order to establish that [plaintiff] was exempt as an administrative employee, [defendant] was required to show all of the following: (1) his duties and responsibilities involve the performance of office or nonmanual work directly related to management policies or general business operations of [defendant]; (2) he customarily and regularly exercises discretion and independent judgment; (3) he performs work requiring special training, experience, or knowledge under general supervision only (the two alternative prongs of the general supervision element are not

pertinent to our discussion); (4) he is primarily engaged in duties that meet the test of exemption; and (5) his monthly salary is equivalent to no less than two times the state minimum wage for full-time employment.” (*United Parcel Service Wage & Hour Cases, supra,* 190 Cal.App.4th at p. 1028 [relying on 8 Cal. Code Regs., § 11090, subd. 1(A)(2)].)

- “Read together, the applicable Labor Code statutes, wage orders, and incorporated federal regulations now provide an explicit and extensive framework for analyzing the administrative exemption.” (*Harris v. Superior Court* (2011) 53 Cal.4th 170, 182 [135 Cal.Rptr.3d 247, 266 P.3d 953].)

- “Determining whether or not all of the elements of the exemption have been established is a fact-intensive inquiry.” (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1014 [118 Cal.Rptr.3d 834].)

- “Review of the determination that [plaintiff] was not an exempt employee is a mixed question of law and fact. Whether an employee satisfies the elements of the exemption is a question of fact reviewed for substantial evidence. The appropriate manner of evaluating the employee’s duties is a question of law that we review independently.” (*Heyen, supra,* 216 Cal.App.4th at p. 817, internal citations omitted.)

- “The appropriateness of any employee’s classification as exempt must be based on a review of the actual job duties performed by that employee. Wage Order 9 expressly provides that ‘[t]he *work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work,* together with the employer’s realistic expectations and the realistic requirements of the job, shall be considered … .’ No bright-line rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—the regulations identify job duties, not job titles. ‘A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee’s salary and duties meet the requirements of the regulations … .’ ” (*United Parcel Service Wage & Hour Cases, supra,* 190 Cal.App.4th at p. 1014–1015, original italics, internal citation omitted.)

- “This is not a day-by-day analysis. The issue is whether the employees ‘ ”spend more than 51% of their time on managerial tasks in any given workweek.” ’ ” (*Batze v. Safeway, Inc.* (2017) 10 Cal.App.5th 440, 473, fn. 36 [216 Cal.Rptr.3d 390].)

- “Put simply, ‘the regulations do not recognize “hybrid” activities—i.e., activities that have both “exempt” and “nonexempt” aspects. Rather, the regulations require that each discrete task be separately classified as either “exempt’ or “nonexempt.” [Citations.]’ [¶] We did not state, however, that the same task must always be labeled exempt or nonexempt: ‘ [I]dentical tasks may be “exempt” or ‘nonexempt” based on the purpose they serve within the organization or department.’ ” (*Batze, supra,* 10 Cal.App.5th at p. 474.)

- “In basic terms, the administrative/production worker dichotomy distinguishes between administrative employees who are primarily engaged in ‘ “administering the business affairs of the enterprise” ’ and production-level employees whose ‘ “primary duty is producing the commodity or commodities, whether goods or services, that the enterprise exists to produce and market." [Citation.]' ¶¶ [T]he dichotomy is a judicially created creature of the common law, which has been effectively superseded in this context by the more specific and detailed statutory and regulatory enactments." (*Harris, supra,* 53 Cal.4th at pp. 183, 188.)

- "We do not hold that the administrative/production worker dichotomy … can never be used as an analytical tool. We merely hold that the Court of Appeal improperly applied the administrative/production worker dichotomy as a dispositive test. [¶] … [I]n resolving whether work qualifies as administrative, courts must consider the particular facts before them and apply the language of the statutes and wage orders at issue. Only if those sources fail to provide adequate guidance … is it appropriate to reach out to other sources." (*Harris, supra,* 53 Cal.4th at p. 190.)

- "[T]he federal regulations incorporated into Wage Order 7 do not support the 'multi-tasking' standard proposed by [defendant]. Instead, they suggest, as the trial court correctly instructed the jury, that the trier of fact must categorize tasks as either 'exempt' or 'nonexempt' based on the purpose for which [plaintiff] undertook them." (*Heyen, supra,* 216 Cal.App.4th at p. 826.)

- "Wage Order 4 refers to compensation in the form of a 'salary.' It does not define the term. The regulation does not use a more generic term, such as 'compensation' or 'pay.' Either of these terms would encompass hourly wages, a fixed annual salary, and anything in between. 'Salary' is a more specific form of compensation. A salary is generally understood to be a fixed rate of pay as distinguished from an hourly wage. Thus, use of the word 'salary' implies that an exempt employee's pay must be something other than an hourly wage. California's Labor Commission noted in an opinion letter dated March 1, 2002, that the Division of Labor Standards Enforcement (DLSE) construes the IWC wage orders to incorporate the federal salary-basis test for purposes of determining whether an employee is exempt or nonexempt." (*Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 397−398 [156 Cal.Rptr.3d 697, footnote omitted.)

- "[T]he costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption … ." (*Kao v. Holiday* (2017) 12 Cal.App.5th 947, 958 [219 Cal.Rptr.3d 580].)

- "The rule is that state law requirements for exemption from overtime pay must be at least as protective of the employee as the corresponding federal standards. Since federal law requires that, in order to meet the salary basis test for exemption the employee would have to be paid a predetermined amount that is not subject to reduction based upon the number of hours worked, state law requirements must be at least as protective." (*Negri, supra,* 216 Cal.App.4th at p. 398.)

- "Under California law, to determine whether an employee was properly classified as 'exempt,' the trier of fact must look not only to the 'work actually performed by the employee during the … workweek,' but also to the 'employer's realistic expectations and the realistic requirements of the job.' " (*Heyen, supra,* 216 Cal.App.4th at p. 828.)

- "Having recognized California's distinctive quantitative approach to determining which employees are outside salespersons, we must then address an issue implicitly raised by the parties that caused some confusion in the trial court and the Court of Appeal: Is the number of hours worked in sales-related activities to be determined by the number of hours that the employer, according to its job description or its estimate, claims the employee should be working in sales, or should it be determined by the actual average hours the employee spent on sales activity? The logic inherent in the IWC's quantitative definition of outside salesperson dictates that neither alternative would be wholly satisfactory. On the one hand, if hours worked on sales were determined through an employer's job description, then the employer could make an employee exempt from overtime laws solely by fashioning an idealized job description that had little basis in reality. On the other hand, an employee who is supposed to be engaged in sales activities during most of his working hours and falls below the 50 percent mark due to his own substandard performance should not thereby be able to evade a valid exemption. A trial court, in determining whether the employee is an outside salesperson, must steer clear of these two pitfalls by inquiring into the *realistic* requirements of the job. In so doing, the court should consider, first and foremost, how the employee actually spends his or her time. But the trial court should also consider whether the employee's practice diverges from the employer's realistic expectations, whether there was any concrete expression of employer displeasure over an employee's substandard performance, and whether these expressions were themselves realistic given the actual overall requirements of the job." (*Ramirez, supra,* 20 Cal.4th at pp. 801−802, original italics.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 392 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-B, *Coverage And Exemptions—In General*, ¶ 11:345 et seq. (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 2, *Minimum Wages*, § 2.04 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.71 (Matthew Bender)

Simmons, Wage and Hour Manual for California Employers, Ch. 2, *Coverage of Wage and Hour Laws* (Castle Publications Limited)

Simmons, Wage and Hour Manual for California Employers, Ch. 10, *Exemptions* (Castle Publications Limited)

VF-2720. Affirmative Defense—Nonpayment of Overtime—Executive Exemption

We answer the questions submitted to us as follows:

1. **Did [*name of plaintiff*]'s duties and responsibilities involve management of [*name of defendant*]'s [business/enterprise] or of a customarily recognized department or subdivision of the [business/enterprise]?**

   ____ 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*] customarily and regularly direct the work of two or more employees?**

   ____ 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 authority to hire or fire employees, or were [his/her/*nonbinary pronoun*] suggestions as to hiring or firing and as to advancement and promotion or other changes in status given particular weight? (If you answer yes to either or both parts of this question, answer yes below; if you answer no to both parts of this question, answer no below.)**

   ____ 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*] customarily and regularly exercise discretion and independent 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. **Did [*name of plaintiff*], more than half of the time, perform executive duties that meet the test of the exemption?**

   ____ 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 monthly salary at least [***insert amount that is twice the state minimum wage for full-time employment***]?**

____ 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 2026

Directions for Use

This verdict form is based on CACI No. 2720, *Affirmative Defense—Nonpayment of Overtime—Executive Exemption*. That instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry.

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, depending on the industry and its applicable Industrial Welfare Commission Wage Order, additional or alternative questions may be required.

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-2721. Affirmative Defense—Nonpayment of Overtime—Administrative Exemption

We answer the questions submitted to us as follows:

1. **Did [*name of plaintiff*]'s duties and responsibilities involve performance of office or nonmanual work directly related to management policies or general business operations of [*name of defendant*] or [*name of defendant*]'s customers?**

 ____ 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*] customarily and regularly exercise discretion and independent judgment?**

 ____ 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*] perform, under general supervision only, specialized or technical work that requires special training, experience, or knowledge?]**

 [*or*]

 [Did [*name of plaintiff*] regularly and directly assist a proprietor or a bona fide executive or administrator?

 [*or*]

 [Did [*name of plaintiff*] perform, under general supervision only, special assignments and tasks?]

 [(If you answer yes to any of the parts of this question, answer yes below; if you answer no to all parts of this question, answer no below.)]

 ____ Yes ____ No

 If you answered 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*], more than half of the time, perform administrative duties that meet the test of the exemption?**

 ____ 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 monthly salary at least [***insert amount that is twice the state minimum wage for full time employment***]?**
____ 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 2026

Directions for Use

This verdict form is based on CACI No. 2721, *Affirmative Defense—Nonpayment of Overtime—Administrative Exemption*. That instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry.

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, additional or alternative questions may be required depending on the industry and its applicable Industrial Welfare Commission Wage Order.

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.)

3075. Disability Discrimination—Unruh Act—Website or Mobile Application Equal Access—Essential Factual Elements (Civ. Code, § 51)

[*Name of plaintiff*] claims that [*name of defendant*] denied [him/her/*nonbinary pronoun*] full and equal access to [*name of defendant*]'s goods, services, or accommodations because of [his/her/its/*nonbinary pronoun*] [website/mobile application] [*specify terms or conditions that allegedly created barrier to access*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. That [*name of plaintiff*] had [*specify disability, e.g., a visual impairment*];

[2. That [*name of plaintiff*] had a genuine intent to [use/sign up for/*specify other act*] [*name of defendant*]'s [website/mobile application];]

2. That [*name of defendant*] denied [*name of plaintiff*] full and equal access to [name of *defendant*]'s goods, services, or accommodations because [his/her/its/*nonbinary pronoun*] [website/mobile application] was inaccessible to [*name of plaintiff*] due to [*name of plaintiff*]'s [*specify disability*];

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 December 2026

Directions for Use

The alleged accessibility barrier to using a website or mobile application may depend on the plaintiff's particular disability. Specify the terms or conditions that created the alleged barrier to access.

Optional element 2 should be given if the defendant asserts that the plaintiff did not have a bona fide intent to use the defendant's goods, services, or accommodations.

Elements 3 and 4 may not be needed if plaintiff only seeks a minimum statutory damages award. (Civ. Code § 52.) 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].) For an instruction on damages under the Unruh Civil Rights Act, see CACI No. 3067, *Unruh Civil Rights Act—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, especially about the defendant's operation of the website or mobile application. This element has been omitted from the instruction because it is unlikely to go to a jury.

Sources and Authority

- "Disability" Defined. Government Code sections 12926, 12926.1.

- "We conclude that a person who visits a business's website with intent to use its services and encounters terms or conditions that exclude the person from full and equal access to its services has standing under the Unruh Civil Rights Act, with no further requirement that the person enter into an agreement or transaction with the business." (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1032–1033 [250 Cal.Rptr.3d 770, 446 P.3d 276].)

- "While we agree that an Unruh Civil Rights Act claimant need not be a client or customer of the covered public accommodation, and that he or she need not prove intentional discrimination upon establishing an ADA violation, we do not agree that an Unruh Civil Rights Act claimant's intent or motivation for visiting the covered public accommodation is irrelevant to a determination of the merits of his or her claim. [Plaintiff's] argument conflates standing requirements with the merits of her claim. 'A litigant's standing to sue is a threshold issue to be resolved before the matter can be reached on the merits.' Here, [plaintiff] had standing to assert an Unruh Civil Rights Act claim against [defendant]. What was unclear was whether her factual allegations could overcome [defendant's] assertion that she did 'not actually possess a *bona fide intent* … to use its services.' " (*Thurston v. Omni Hotels Management Corp.* (2021) 69 Cal.App.5th 299, 309 [284 Cal.Rptr.3d 341], original italics.)

Secondary Sources

3704. Existence of "Employee" Status Disputed

[*Name of plaintiff*] must prove that [*name of agent*] was [*name of defendant*]'s employee.

In deciding whether [*name of agent*] was [*name of defendant*]'s employee, the most important factor is whether [*name of defendant*] had the right to control how [*name of agent*] performed the work, rather than just the right to specify the result. One indication of the right to control is that the hirer can discharge the worker [without cause]. It does not matter whether [*name of defendant*] exercised the right to control.

In deciding whether [*name of defendant*] was [*name of agent*]'s employer, in addition to the right of control, you must consider the full nature of their relationship. You should take into account the following additional factors, which, if true, may show that [*name of defendant*] was the employer of [*name of agent*]. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.

(a) **[*Name of defendant*] supplied the equipment, tools, and place of work;**

(b) **[*Name of agent*] was paid by the hour rather than by the job;**

(c) **[*Name of defendant*] was in business;**

(d) **The work being done by [*name of agent*] was part of the regular business of [*name of defendant*];**

(e) **[*Name of agent*] was not engaged in a distinct occupation or business;**

(f) **The kind of work performed by [*name of agent*] is usually done under the direction of a supervisor rather than by a specialist working without supervision;**

(g) **The kind of work performed by [*name of agent*] does not require specialized or professional skill;**

(h) **The services performed by [*name of agent*] were to be performed over a long period of time; [and]**

(i) **[*Name of defendant*] and [*name of agent*] believed that they had an employer-employee relationship[./; and]**

(j) **[*Specify other factor*].**

New September 2003; Revised December 2010, June 2015, December 2015, November 2018, May 2020, May 2021, July 2025, December 2026**

Directions for Use

This instruction is based on *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399] and the Restatement Second of Agency, section 220. It is sometimes referred to as the *Borello* test or the common law test. (See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 934 [232 Cal.Rprt.3d 1, 416 P.3d 1].) It is intended to address the employer-employee relationship for purposes of assessing vicarious responsibility on the employer for the employee's acts. The common law test of employment is not always appropriate beyond the tort context in which it was originally developed to establish an employer's vicarious liability. (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56 [334 Cal.Rptr.3d 1, 570 P.3d 885] [looking to "history and fundamental purposes of the statute at issue" to determine whether the Legislature intended the test to apply].)

Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

Secondary factors (a)–(i) come from the Restatement section 220. (See also *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 532 [173 Cal.Rptr.3d 332, 327 P.3d 165]; Rest.3d Agency, § 7.07, com. f~~;~~.) They have been phrased so that a yes answer points toward an employment relationship. Omit any that are not relevant. Additional factors have been endorsed by the California Supreme Court and may be included if applicable. (See *S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at pp. 354–355.) Therefore, an "other" option (j) has been included.

Borello was a workers' compensation case. In *Dynamex, supra,* the court, in holding that *Borello* did not control the specific wage order dispute at issue, noted that "it appears more precise to describe *Borello* as calling for resolution of the employee or independent contractor question by focusing on the intended scope and purposes of the particular statutory provision or provisions at issue." (*Dynamex*, *supra*, 4 Cal.5th at p. 934.) The court also said that "[t]he *Borello* decision repeatedly emphasizes statutory purpose as the touchstone for deciding whether a particular category of workers should be considered employees rather than independent contractors for purposes of social welfare legislation." (*Id.* at p. 935.) With respondeat superior, there is no statutory provision or social welfare legislation to be considered. (Cf. Lab. Code, § 2775 [codifying *Dynamex* for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, with limited exceptions for specified occupations].)

Sources and Authority

- Principal-Agent Relationship. Civil Code section 2295.

- Rebuttable Presumption that Contractor Is Employee Rather Than Independent Contractor; Proof of Independent Contractor Status. Labor Code section 2750.5.

- "[S]ubject to certain policy considerations, a hirer … cannot be held vicariously liable for the negligence of his independent contractors." (*Blackwell v. Vasilas* (2016) 244 Cal.App.4th 160, 168 [197 Cal.Rptr.3d 753].)

- "Whether a common law employer-employee relationship exists turns foremost on the degree of a hirer's right to control how the end result is achieved." (*Ayala, supra,* 59 Cal.4th at p. 528.)

- "However, the courts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 350, internal citations omitted.)

- "While the extent of the hirer's right to control the work is the foremost consideration in assessing whether a common law employer-employee relationship exists, our precedents also recognize a range of secondary indicia drawn from the Second and Third Restatements of Agency that may in a given case evince an employment relationship. Courts may consider '(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.' " (*Ayala, supra,* 59 Cal.4th at p. 532.)

- " 'Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.' " (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 351, internal citations omitted.)

- "[T]he Restatement guidelines heretofore approved in our state remain a useful reference." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 354.)

- "We also note the six-factor test developed by other jurisdictions which determine independent contractorship in light of the remedial purposes of the legislation. Besides the 'right to control the work,' the factors include (1) the alleged employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business. [¶] As can be seen, there are many points of individual similarity between these guidelines and our own traditional Restatement tests. We find that all are logically pertinent to the inherently difficult determination whether a provider of service is an employee or an excluded independent contractor for purposes of workers' compensation law." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at pp. 354–355, internal cross-reference omitted.)

- "[A]t common law the problem of determining whether a worker should be classified as an employee or an independent contractor initially arose in the tort context--in deciding whether the hirer of the worker should be held vicariously liable for an injury that resulted from the worker's actions. In the vicarious liability context, the hirer's right to supervise and control the details of the worker's actions was reasonably viewed as crucial, because ' "[t]he extent to which the employer had a right to control [the details of the service] activities was . . . highly relevant to the question whether the employer ought to be legally liable for them . . . .” ’ For this reason, the question whether the hirer controlled the details of the worker’s activities became the primary common law standard for determining whether a worker was considered to be an employee or an independent contractor.” (*Dynamex, supra,* 4 Cal.5th at p. 927, internal citations omitted.)

- “[A]lthough we have sometimes characterized *Borello* as embodying the common law test or standard for distinguishing employees and independent contractors, it appears more precise to describe *Borello* as calling for resolution of the employee or independent contractor question by focusing on the intended scope and purposes of the particular statutory provision or provisions at issue. In other words, *Borello* calls for application of a *statutory purpose* standard that considers the control of details and other potentially relevant factors identified in prior California and out-of-state cases in order to determine which classification (employee or independent contractor) best effectuates the underlying legislative intent and objective of the statutory scheme at issue.” (*Dynamex, supra,* 4 Cal.5th at p. 934, original italics, internal citation omitted.)

- “The trial court’s determination of employee or independent contractor status is one of fact if it depends upon the resolution of disputed evidence or inferences. ‘ “Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact … .” ’ The question is one of law only if the evidence is undisputed.” (*Linton v. DeSoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1225 [223 Cal.Rptr.3d 761.)

- The burden of proving the existence of an agency rests on the one affirming its existence. (*Burbank v. National Casualty Co.* (1941) 43 Cal.App.2d 773, 781 [111 P.2d 740].)

- “The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.” (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 349.)

- “[A]lthough the Caregiver Contract signed by Plaintiff stated she was an independent contractor, not an employee, there is evidence of other indicia of employment and Plaintiff averred in her declaration that the Caregiver Contract was presented to her ‘on a take it or leave it basis.’ ‘A party’s use of a label to describe a relationship with a worker … will be ignored where the evidence of the parties’ actual conduct establishes that a different relationship exists.’ ” (*Duffey v. Tender Heart Home Care Agency, LLC* (2019) 31 Cal.App.5th 232, 257–258 [242 Cal.Rptr.3d 460].)

- “It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship.” (*Malloy v. Fong* (1951) 37 Cal.2d 356, 370 [232 P.2d 241], internal citations omitted.)

- “ ‘[W]hat matters is whether a hirer has the “legal right to control the activities of the alleged agent” … . That a hirer chooses not to wield power does not prove it lacks power.’ ” (*Duffey, supra,* 31 Cal.App.5th at p. 257.)

- “Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because ‘[t]he power of the principal to terminate the services of the agent gives him the means of controlling the agent’s activities.’ ” (*Ayala, supra,* 59 Cal.4th at p. 531.)

- "The worker's corresponding right to leave is similarly relevant: ' "An employee may quit, but an independent contractor is legally obligated to complete his contract." ' " (*Ayala, supra,* 59 Cal.4th at p. 531 fn. 2.)

- "A finding of employment is supported where the workers are 'a regular and integrated portion of [the] business operation.' " (*Garcia v. Seacon Logix Inc.* (2015) 238 Cal.App.4th 1476, 1487 [190 Cal.Rptr.3d 400].)

- "Where workers are paid weekly or by the hour, rather than by the job, it suggests an employment relationship." (*Garcia, supra,* 238 Cal.App.4th at p. 1488.)

- "In cases where there is a written contract, to answer that question [the right of control] without full examination of the contract will be virtually impossible. … [¶] … [T]he rights spelled out in a contract may not be conclusive if other evidence demonstrates a practical allocation of rights at odds with the written terms." (*Ayala, supra,* 59 Cal.4th at p. 535.)

- "[T]he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires only in the result of the work, and not the means by which it is achieved." (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179 [183 Cal.Rptr.3d 394].)

- " '[T]he owner may retain a broad general power of supervision and control as to the results of the work so as to insure satisfactory performance of the independent contract—including the right to inspect [citation], … the right to make suggestions or recommendations as to details of the work [citation], the right to prescribe alterations or deviations in the work [citation]—without changing the relationship from that of owner and independent contractor … .' " (*Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143 [159 Cal.Rptr.3d 102], quoting *McDonald v. Shell Oil Co.* (1955) 44 Cal.2d 785, 790 [285 P.2d 902].)

- "Agency and independent contractorship are not *necessarily* mutually exclusive legal categories as independent contractor and servant or employee are. In other words, an agent may also be an independent contractor. One who contracts to act on behalf of another and subject to the other's control, except with respect to his physical conduct, is both an agent and an independent contractor." (*Jackson, supra,* 233 Cal.App.4th at p. 1184, original italics, internal citations omitted].)

- "[W]hen a statute refers to an 'employee' without defining the term, courts have generally applied the common law test of employment to that statute." (*Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 586 [135 Cal.Rptr.3d 213].)

- "[A] termination at-will clause for both parties may properly be included in an independent contractor agreement, and is not by itself a basis for changing that relationship to one of an employee." (*Arnold, supra,* 202 Cal.App.4th at p. 589.)

- Restatement Second of Agency, section 220, provides: "(1) A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control. [¶] (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact,

> among others, are considered: [¶] (a) the extent of control which, by the agreement, the master may exercise over the details of the work; [¶] (b) whether or not the one employed is engaged in a distinct occupation or business; [¶] (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; [¶] (d) the skill required in the particular occupation; [¶] (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; [¶] (f) the length of time for which the person is employed; [¶] (g) the method of payment, whether by the time or by the job; [¶] (h) whether or not the work is a part of the regular business of the employer; [¶] (i) whether or not the parties believe they are creating the relation of master and servant; and [¶] (j) whether the principal is or is not in business."

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 29A

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.03[2] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.04 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, §§ 248.15, 248.22, 248.51 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.13 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, §§ 100A.25, 100A.34 (Matthew Bender)

California Civil Practice: Torts §§ 3:5–3:6 (Thomson Reuters)

4355. Breach of the Implied Covenant of Quiet Enjoyment—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] breached [his/her/*nonbinary pronoun*] right to quiet enjoyment of the property. To succeed, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] and [*name of defendant*] entered into a lease for the property;**

2. **That [*name of defendant*]'s [acts/ [or] omissions] substantially interfered with [*name of plaintiff*]'s right to use or enjoy the property;**

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.**

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Directions for Use

The instruction is for use only in an action separate from the unlawful detainer process. It assumes the tenant or former tenant is the plaintiff.

Element 1 is based on the premise that every lease contains an implied covenant of quiet enjoyment absent language in the lease to the contrary; modify element 1 if there is a question of fact about the applicability of contract language to the contrary. (See *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 590 [22 Cal.Rptr.3d 832].)

A claim for breach of the covenant of quiet enjoyment need not be based on the landlord's personal interference with the tenant's quiet enjoyment; the instruction may be modified as needed to reflect the underlying facts and relationship between the landlord and a third party alleged to have interfered with the plaintiff's covenant of quiet enjoyment. (See *Andrews, supra,* 125 Cal.App.4th at p. 590, 593 [interference by a neighbor or tenant].)

In the context of breach of contract, it has been said that the term "substantial factor" has no precise definition, but is something that is more than a slight, trivial, negligible, or theoretical factor in producing a particular result. (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 871–872 [63 Cal.Rptr.3d 514]; see CACI No. 430, *Causation—Substantial Factor*, applicable to negligence actions.)

See instructions in the Contracts series (CACI No. 300 et seq.).

Sources and Authority

- Quiet Possession During the Term of Hiring. Civil Code section 1927.

- "In the absence of language to the contrary, *every lease* contains an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have quiet enjoyment and possession of the premises. The covenant of quiet enjoyment 'insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Ginsberg v. Gamson* (2015) 205 Cal.App.4th 873, 896 [141 Cal.Rptr.3d 62], original italics, internal citations omitted.)

- "It is not necessary to show that the landlord acted with the subjective intent to compel the tenant to leave the property or deprive the tenant of quiet enjoyment. There is a 'presumption that a landlord intends the natural and probable consequences of his acts; and where the acts of the landlord effectively deprive the tenant of the use and enjoyment of the premises, the intent to evict is implied from the character of the acts done.' " (*Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 292, internal citations omitted.)

- "Substantial interference is required to establish a breach of quiet enjoyment. Minor inconveniences and annoyances are not actionable breaches of the implied covenant of quiet enjoyment. To be actionable, the landlord's act or omission must substantially interfere with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Andrews, supra,* 125 Cal.App.4th at p. 589.)

- "The perpetrator of the interference with the tenant's quiet enjoyment need not be the landlord personally. There may be an actionable breach where the interference is caused by a neighbor or tenant claiming under the landlord." (*Andrews, supra,* 125 Cal.App.4th at p. 590.)

- "The implied covenant of quiet enjoyment implies a term in a contract, and a breach of the covenant gives rise to an action in contract. As such, the damages available for a breach of the covenant are contract damages." (*Ginsberg, supra,* 205 Cal.App.4th at pp. 896–897.)

- "Civil Code section 3304 prescribes the measure of damages for breach of the covenant of quiet enjoyment. Additionally, case law holds a tenant suing for breach of the covenant of quiet enjoyment may recover contract damages in accordance with Civil Code section 3300 — an amount that will compensate the aggrieved party for all the detriment caused by the breach or which in the ordinary course would be a likely result. Thus, in an appropriate case, recovery may include, inter alia, lost profits, lost business goodwill and moving expenses." (*Andrews, supra,* 125 Cal.App.4th at p. 590–591.)

Secondary Sources

17 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 635–637

7 California Real Estate Law & Practice, Chapter 200, *Termination: Causes and Procedures* §§ 200.50–200.53 (2025)

42 California Jurisprudence 3d *Landlord and Tenant* § 146

1 Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 4, *Termination of Tenancy* 4.46