Item number: 01

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 10/4/24

Rules Committee action requested [Choose from the drop-down menu below]:
Approve

Title of proposal: Civil Jury Instructions: Instructions With Minor or Nonsubstantive Revisions (Release 46)

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Judicial Council of California Civil Jury Instructions: Revise CACI Nos. 1800, 1812, 3241, and 5022

Committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions

Staff contact (name, phone and e-mail)*: Eric Long, 415-865-7691, eric.long@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 10/26/23
Project description from annual agenda: 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Sources; and 7. Technical Corrections

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was
  ☒ reviewed by EGG on *(date)* 9/17/24
  ☒ approved by Office Director (or Designee) (*name*) Deborah Brown
  on (date) 9/24/24

If either of above not checked, explain why:

*Complete the following for all reports to be submitted to council (optional for ITCs)**:***

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

Judicial Council *of* California

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M E M O R A N D U M

Date
September 19, 2024

To
Members of the Rules Committee

From
Advisory Committee on Civil Jury Instructions
Adrienne M. Grover, Chair

Subject
Civil Jury Instructions: Instructions With Minor or Nonsubstantive Revisions (Release 46)

Action Requested
Review and Approve Publication of Instructions

Deadline
October 4, 2024

Contact
Eric Long, Attorney
Legal Services
415-865-7691 phone
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Executive Summary

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve revisions to the *Judicial Council of California Civil Jury Instructions (CACI)* to maintain and update those instructions. The four instructions in this release, prepared by the advisory committee, contain the types of revisions that the Judicial Council has given the Rules Committee final authority to approve—primarily changes to the Sources and Authority and other changes that are unlikely to cause controversy or are nonsubstantive.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve for publication revisions to four civil jury instructions, prepared by the advisory committee, that contain changes that do not require posting for public comment or full Judicial Council approval: CACI Nos. 1800, 1812, 3241, and 5022.

These instructions will be published in the 2025 edition of *CACI* and posted online on the California Courts website.

The revised instructions are attached at pages 5–18.

Relevant Previous Council Action

In 2003, the Judicial Council approved civil jury instructions—drafted by the Task Force on Jury Instructions—for initial publication in September 2003. The Advisory Committee on Civil Jury Instructions is charged with maintaining and updating those instructions.[1]

In 2006, the Judicial Council approved the Rules Committee's delegation of authority to the Advisory Committee on Civil Jury Instructions to review and approve nonsubstantive grammatical and typographical corrections to the jury instructions, and authority for the Rules Committee to "[r]eview and approve nonsubstantive technical changes and corrections and minor substantive changes unlikely to create controversy to Judicial Council of California Civil Jury Instructions (CACI) and Criminal Jury Instructions (CALCRIM)."[2]

Under the implementing guidelines that the Rules Committee (known at the time as the Rules and Projects Committee, or RUPRO) adopted on December 19, 2006, titled *Jury Instructions Corrections and Technical and Minor Substantive Changes*, examples of the changes the Rules Committee has final authority to approve include the following:

(a) Additions, substitutions and deletions of cases and statutes to the Sources and Authority;
(b) Changes to statutory language quoted in Sources and Authority that are required by legislative amendments, provided that the amendment does not affect the text of the instruction itself;[3]
(c) Additions or changes to the Directions for Use;[4]
(d) Changes to instruction text that are nonsubstantive—that is, changes that do not affect or alter any fundamental legal basis of the instruction—and are unlikely to create controversy;
(e) Changes to instruction text required by subsequent developments (such as new cases or legislative amendments), provided that the change, though substantive, is both necessary and unlikely to create controversy; and
(f) Revocation of instructions for which any fundamental legal basis of the instruction is no longer valid because of statutory amendment or case law.

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[1] Cal. Rules of Court, rules 2.1050(e), 10.58(a).

[2] Judicial Council of Cal., Rules and Projects Committee, *Jury Instructions: Approve New Procedure for RUPRO Review and Approval of Changes in the Jury Instructions* (Sept. 12, 2006), p. 1.

[3] In light of the committee's 2014 decision to remove verbatim quotes of statutes, rules, and regulations from *CACI*, this category is now mostly moot. It still applies if a statute, rule, or regulation is revoked, or if subdivisions are renumbered.

[4] The committee presents only nonsubstantive changes to the Directions for Use for the Rules Committee's final approval. Substantive changes are posted for public comment and presented to the Judicial Council for approval.

Analysis/Rationale

Overview of revisions

Three of the four instructions in this release have proposed revisions under category (a) above (additions and deletions of cases to the Sources and Authority). One instruction (CACI No. 5022, *Introduction to General Verdict Form*) has a clarifying deletion from the instructional text that relates to a verdict form change approved by the Judicial Council in May 2024.[5] This change, which falls under category (e) above, is unlikely to cause controversy because it conforms an instruction in the Concluding Instructions series on general verdict forms to the verdict-form content approved by the council earlier this year in release 45.

Standards for adding case excerpts to Sources and Authority

The standards approved by the advisory committee for adding case excerpts to the Sources and Authority are as follows:

- *CACI* Sources and Authority are in the nature of a digest. Entries should be direct quotes from cases. However, all cases that may be relevant to the subject area of an instruction need not be included, particularly if they do not involve a jury matter.
- Each legal component of the instruction should be supported by authority—either statutory or case law.
- Authority addressing the burden of proof should be included.
- Authority addressing the respective roles of judge and jury (questions of law and questions of fact) should be included.
- Only one case excerpt should be included for each legal point.
- California Supreme Court authority should always be included, if available.
- If no Supreme Court authority is available, the most recent California appellate court authority for a point should be included.
- A U.S. Supreme Court case should be included on any point for which it is the controlling authority.
- A Ninth Circuit Court of Appeals case may be included if the case construes California law or federal law that is the subject of the *CACI* instruction.
- Other cases may be included if deemed particularly useful to the users.
- The fact that the committee chooses to include a case excerpt in the Sources and Authority does not mean that the committee necessarily believes that the language is binding precedent. The standard is simply whether the language would be useful or of interest to users.

[5] Judicial Council of Cal., Advisory Com. Rep., *Jury Instructions: Civil Jury Instructions (Release 45)* (Apr. 19, 2024), *https://jcc.legistar.com/View.ashx?M=F&ID=12870957&GUID=BEE1877E-91BA-4377-8A96-EC9153C68865*, p. 4.

Policy implications

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, revise, and add topics to *CACI* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

Because the revisions to these instructions do not change the legal effect of the instructions in any way, they were not circulated for public comment.

Alternatives considered

California Rules of Court, rules 2.1050 and 10.58 specifically charge the advisory committee to regularly review case law and statutes; to make recommendations to the Judicial Council for updating, amending, and adding topics to *CACI*; and to submit its recommendations to the council for approval. The proposed revisions and additions meet this responsibility. There are no alternatives to be considered.

Fiscal and Operational Impacts

There are no implementation costs.

Attachments and Links

1. Proposed revised *CACI* instructions, at pages 5–18

CIVIL JURY INSTRUCTIONS
(Release 46; For Rules Committee Approval)
TABLE OF CONTENTS

1800. Intrusion Into Private Affairs

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to privacy. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] had a reasonable expectation of privacy in [***specify place or other circumstance***];**

2. **That [***name of defendant***] intentionally intruded in [***specify place or other circumstance***];**

3. **That [***name of defendant***]'s intrusion would be highly offensive to a reasonable person;**

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

5. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

In deciding whether [*name of plaintiff***] had a reasonable expectation of privacy in [***specify place or other circumstance***], you should consider, among other factors, the following:**

(a) The identity of [*name of defendant***];**

(b) The extent to which other persons had access to [*specify place or other circumstance***] and could see or hear** [***name of plaintiff***]**; and**

(c) The means by which the intrusion occurred.

In deciding whether an intrusion is highly offensive to a reasonable person, you should consider, among other factors, the following:

(a) The extent of the intrusion;

(b) [*Name of defendant*]**'s motives and goals; and**

(c) The setting in which the intrusion occurred.

New September 2003; Revised June 2010

Directions for Use

If the plaintiff is asserting more than one privacy right, give an introductory instruction stating that a

person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing.

Sources and Authority

- "Seventy years after Warren and Brandeis proposed a right to privacy, Dean William L. Prosser analyzed the case law development of the invasion of privacy tort, distilling four distinct kinds of activities violating the privacy protection and giving rise to tort liability: (1) intrusion into private matters; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person's name or likeness. … Prosser's classification was adopted by the Restatement Second of Torts in sections 652A–652E. California common law has generally followed Prosser's classification of privacy interests as embodied in the Restatement." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24 [26 Cal.Rptr.2d 834, 865 P.2d 633].)

- "[The tort of intrusion] encompasses unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized, as well as unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or photographic spying." (*Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 230–231 [74 Cal.Rptr.2d 843, 955 P.2d 469], internal citation omitted.)

- "The foregoing arguments have been framed throughout this action in terms of both the common law and the state Constitution. These two sources of privacy protection 'are not unrelated' under California law. (*Shulman, supra,* 18 Cal.4th 200, 227; accord, *Hill, supra,* 7 Cal.4th 1, 27; but see *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 313, fn. 13 [127 Cal.Rptr.2d 482, 58 P.3d 339] [suggesting it is an open question whether the state constitutional privacy provision, which is otherwise self-executing and serves as the basis for injunctive relief, can also provide direct and sole support for a damages claim].)" (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 286 [97 Cal.Rptr.3d 274, 211 P.3d 1063].)

- "[W]e will assess the parties' claims and the undisputed evidence under the rubric of both the common law and constitutional tests for establishing a privacy violation. Borrowing certain shorthand language from *Hill, supra,* 7 Cal.4th 1, which distilled the largely parallel elements of these two causes of action, we consider (1) the nature of any intrusion upon reasonable expectations of privacy, and (2) the offensiveness or seriousness of the intrusion, including any justification and other relevant interests." (*Hernandez, supra,* 47 Cal.4th at p. 288.)

- "Whether an expectation of privacy is reasonable in any given circumstance is a context-specific inquiry, and ' "[t]he protection afforded to the plaintiff's interest in his [or her] privacy must be relative to the customs of the time and place, to the occupation of the plaintiff[,] and to the habits of his [or her] neighbors and fellow citizens." ' *Burrows* … recognizes as much in identifying 'compulsion by legal process' as a factor potentially affecting the expectation of privacy. Ultimately, 'whether a legally recognized privacy interest exists is a question of law, and whether the circumstances give rise to a reasonable expectation of privacy and a serious invasion thereof are mixed questions of law and fact.' " (*Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, 500 [316 Cal.Rptr.3d 792], original italics, internal citations omitted.)

- "The cause of action … has two elements: (1) intrusion into a private place, conversation or matter,

(2) in a manner highly offensive to a reasonable person. The first element … is not met when the plaintiff has merely been observed, or even photographed or recorded, in a public place. Rather, 'the plaintiff must show the defendant penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff.' " (*Sanders v. American Broadcasting Co.* (1999) 20 Cal.4th 907, 914–915 [85 Cal.Rptr.2d 909, 978 P.2d 67], internal citations omitted.)

- "As to the first element of the common law tort, the defendant must have 'penetrated some zone of physical or sensory privacy … or obtained unwanted access to data' by electronic or other covert means, in violation of the law or social norms. In either instance, the expectation of privacy must be 'objectively reasonable.' In *Sanders* [*supra,* at p. 907] … , this court linked the reasonableness of privacy expectations to such factors as (1) the identity of the intruder, (2) the extent to which other persons had access to the subject place, and could see or hear the plaintiff, and (3) the means by which the intrusion occurred." (*Hernandez, supra,* 47 Cal.4th at pp. 286–287.)

- "Privacy for purposes of the intrusion tort must be evaluated with respect to the identity of the alleged intruder and the nature of the intrusion." (*Sanders, supra,* 20 Cal.4th at pp. 917–918.)

- "The second common law element essentially involves a 'policy' determination as to whether the alleged intrusion is 'highly offensive' under the particular circumstances. Relevant factors include the degree and setting of the intrusion, and the intruder's motives and objectives. Even in cases involving the use of photographic and electronic recording devices, which can raise difficult questions about covert surveillance, 'California tort law provides no bright line on ["offensiveness"]; each case must be taken on its facts.' " (*Hernandez, supra,* 47 Cal.4th at p. 287, internal citations omitted.)

- "While what is 'highly offensive to a reasonable person' suggests a standard upon which a jury would properly be instructed, there is a preliminary determination of 'offensiveness' which must be made by the court in discerning the existence of a cause of action for intrusion. ... A court determining the existence of 'offensiveness' would consider the degree of intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded." (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1483–1484 [232 Cal.Rptr. 668].)

- "Plaintiffs must show more than an intrusion upon reasonable privacy expectations. Actionable invasions of privacy also must be 'highly offensive' to a reasonable person, and 'sufficiently serious' and unwarranted as to constitute an 'egregious breach of the social norms.' " (*Hernandez, supra,* 47 Cal.4th at p. 295, internal citation omitted.)

- " '[T]he extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy.' The impact on the plaintiff's privacy rights must be more than 'slight or trivial.' " (*Mezger v. Bick* (2021) 66 Cal.App.5th 76, 87 [280 Cal.Rptr.3d 720], internal citations omitted.)

- "[L]iability under the intrusion tort requires that the invasion be highly offensive to a reasonable person, considering, among other factors, the motive of the alleged intruder." (*Sanders, supra,* 20 Cal.4th at p. 911, internal citations omitted.)

- "[T]he damages flowing from an invasion of privacy logically would include an award for mental

suffering and anguish." (*Miller, supra,* 187 Cal.App.3d at p. 1484, citing *Fairfield v. American Photocopy Equipment Co.* (1955) 138 Cal.App.2d 82 [291 P.2d 194].)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 756, 757, 762–765

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1887

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.02 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy,* § 429.16 (Matthew Bender)

18 California Points and Authorities, Ch. 183, *Privacy: State Constitutional Rights*, § 183.30 (Matthew Bender)

California Civil Practice: Torts § 20:8 (Thomson Reuters)

1812. Comprehensive Computer Data and Access Fraud Act—Essential Factual Elements (Pen. Code, § 502)

[*Name of plaintiff***] claims that [***name of defendant***] has violated the Comprehensive Computer Data and Access Fraud Act. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] is the [owner/lessee] of the [***specify computer, computer system, computer network, computer program, and/or data***];**

2. **That [***name of defendant***] knowingly [***specify one or more prohibited acts from Pen. Code, § 502(c), e.g., accessed [name of plaintiff]'s data on a computer, computer system, or computer network***];**

[3. **That [***name of defendant***]'s [***specify conduct from Pen. Code, § 502(c), e.g., use of the computer services***] was without [***name of plaintiff***]'s permission;]**

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

[5.] **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New May 2020

Directions for Use

Give this instruction for a claim under the Comprehensive Computer Data Access and Fraud Act (CDAFA). CDAFA makes civil remedies available to any person who suffers damage or loss by reason of the commission of certain computer-related offenses. (Pen. Code, § 502(c), (e)(1).)

For element 1, the court may need to define the technology (e.g., "computer network," "computer program or software," "computer system," or "data") or other statutory term depending on the facts and circumstances of the particular case. (See Pen. Code, § 502(b) [defining various terms].) For a definition of "access," see CACI No. 1813, *Definition of "Access."*

Some of the prohibited acts for element 2 may also require that the defendant do something specific with the access or that the defendant have a specific purpose. For example, if the defendant allegedly deleted or used plaintiff's computer data, it must have been done without permission and either to (a) devise or execute any scheme or artifice to defraud, deceive, or extort, or (b) wrongfully control or obtain money, property, or data. (See Pen. Code, § 502(c)(1).) Modify the instruction to include these elements where required.

Include element 3 regarding lack of permission depending on the violation(s) alleged. Lack of permission is a required element for violations of subdivisions (c)(1)–(7) and (c)(9)–(13), but not for violations of subdivisions (c)(8) and (c)(14). Modify element 3 accordingly. Delete element 3 for violations of the latter subdivisions.

If plaintiff's claim involves a "government computer system" or a "public safety infrastructure computer system" and there is a factual dispute about the type of computer system involved, this instruction should be modified to add that issue as an element. (See Pen. Code, § 502(c)(10), (11), (12), (13), and (14).)

Sources and Authority

- Comprehensive Computer Data Access and Fraud Act. Penal Code section 502.

- "Penal Code section 502, subdivision (e)(1) permits a civil action to recover expenses related to investigating the unauthorized computer access." (*Verio Healthcare, Inc. v. Superior Court* (2016) 3 Cal.App.5th 1315, 1321 fn. 3 [208 Cal.Rptr.3d 436].)

- "Whether [plaintiff] owned the data in [defendant's] possession was a question of fact for the jury to decide. By assuming or asking whether [plaintiff] had an *unspecified* interest in the data in question, the instruction as given removed from the jury's consideration an element that [plaintiff] had to prove to prevail on his claim." (*Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, 509 [316 Cal.Rptr.3d 792], original italics.)

- "Four of the section 502, subdivision (c) offenses include access as an element. The provision under which [defendant] was charged does not. When different words are used in adjoining subdivisions of a statute that were enacted at the same time, that fact raises a compelling inference that a different meaning was intended. The Legislature's requirement of unpermitted access in some section 502 offenses and its failure to require that element in other parts of the same statute raise a strong inference that the subdivisions that do not require unpermitted access were intended to apply to persons who gain lawful access to a computer but then abuse that access." (*People v. Childs* (2013) 220 Cal.App.4th 1079, 1102 [164 Cal.Rptr.3d 287], internal citations omitted.)

- "[The CDAFA] does not require *unauthorized* access. It merely requires *knowing* access. What makes that access unlawful is that the person 'without permission takes, copies, or makes use of' data on the computer. A plain reading of the statute demonstrates that its focus is on unauthorized taking or use of information." (*United States v. Christensen* (9th Cir. 2015) 828 F.3d 763, 789, original italics, internal citations omitted.)

- "Because [defendant] had implied authorization to access [plaintiff]'s computers, it did not, at first, violate the [CDAFA]. But when [plaintiff] sent the cease and desist letter, [defendant], as it conceded, knew that it no longer had permission to access [plaintiff]'s computers at all. [Defendant], therefore, knowingly accessed and without permission took, copied, and made use of [plaintiff]'s data." (*Facebook, Inc. v. Power Ventures, Inc.* (9th Cir. 2016) 844 F.3d 1058, 1069.)

- "[T]aking data using a *method* prohibited by the applicable terms of use, when the taking itself generally is permitted, does not violate the CDAFA." (*Oracle USA, Inc. v. Rimini Street, Inc.* (9th Cir. 2018) 879 F.3d 948, 962, reversed in part on other grounds by *Rimini Street, Inc. v. Oracle USA, Inc.* (2019) –586 U.S. —334, 346 [139 S.Ct. 873, ~~881,~~ 203 L.Ed.2d 180], original italics.)

Secondary Sources

5 Witkin, California Criminal Law (4th ed. 2012) Crimes Against Property, § 229 et seq.

31 California Forms of Pleading and Practice, Ch. 349, *Literary Property and Copyright*, § 349.41[5] (Matthew Bender)

3241. Restitution From Manufacturer—New Motor Vehicle (Civ. Code, §§ 1793.2(d)(2), 1794(b))

If you decide that [*name of defendant***] or its authorized repair facility failed to repair the defect(s) after a reasonable number of opportunities, then [***name of plaintiff***] is entitled to recover the amounts [he/she/***nonbinary pronoun***] proves [he/she/***nonbinary pronoun***] paid for the car, including:**

1. **The amount paid to date for the vehicle, including finance charges [and any amount still owed by [***name of plaintiff***]];**

2. **Charges for transportation and manufacturer-installed options; and**

3. **Sales tax, use tax, license fees, registration fees, and other official fees.**

In determining the purchase price, do not include any charges for items supplied by someone other than [*name of defendant***].**

[[*Name of plaintiff***]'s recovery must be reduced by the value of the use of the vehicle before it was [brought in/submitted] for repair. [***Name of defendant***] must prove how many miles the vehicle was driven between the time when [***name of plaintiff***] took possession of the vehicle and the time when [***name of plaintiff***] first delivered it to [***name of defendant***] or its authorized repair facility to fix the defect. [***Insert one of the following:***]**

[Using this mileage number, I will reduce [*name of plaintiff***]'s recovery based on a formula.]**

[Multiply this mileage number by the purchase price, including any charges for transportation and manufacturer-installed options, and divide that amount by 120,000. Deduct the resulting amount from [*name of plaintiff***]'s recovery.]]**

New September 2003; Revised February 2005, June 2005, December 2011, June 2012

Directions for Use

This instruction is intended for use with claims involving new motor vehicles under the Song-Beverly Consumer Warranty Act. The remedy is replacement of the vehicle or restitution. (Civ. Code, § 1793.2(d)(2).) For claims involving other consumer goods, see CACI No. 3240, *Reimbursement Damages—Consumer Goods*.

Incidental damages are recoverable as part of restitution. (Civ. Code, § 1793.2(d)(2)(B).) For an instruction on incidental damages, see CACI No. 3242, *Incidental Damages*. See also CACI No. 3243, *Consequential Damages*.

The remedies for new motor vehicles provided by Civil Code section 1793.2(d)(2) apply to all claims under the Song-Beverly Consumer Warranty Act. (Civ. Code, § 1794(b).) These remedies are also available for implied-warranty claims. (See Civ. Code, § 1791.1(d).) The first paragraph of this

instruction can be modified if it is being used for claims other than those brought under Civil Code section 1793.2(d)(2).

Modify element 1 depending on whether plaintiff still has an outstanding obligation on the financing of the vehicle.

The last two bracketed options are intended to be read in the alternative. Use the last bracketed option if the court desires for the jury to make the calculation of the deduction. The "formula" referenced in the last bracketed paragraph can be found at Civil Code section 1793.2(d)(2)(C).

Additional remedies under the California Uniform Commercial Code are provided for "goods." (See Civ. Code, § 1794(b).) Although consumer goods and new motor vehicles are treated differently under Civil Code section 1793.2, "consumer goods" are defined broadly under Song-Beverly (see Civ. Code, § 1791(a) ["consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables]). At least one court has applied the California Uniform Commercial Code remedies for new motor vehicles. (See *Krotin v. Porsche Cars North America, Inc.* (1995) 38 Cal.App.4th 294, 302 [45 Cal.Rptr.2d 10].)

Sources and Authority

- Measure of Buyer's Damages. Civil Code section 1794(b).

- Replacement or Reimbursement After Reasonable Number of Repair Attempts: New Motor Vehicle. Civil Code section 1793.2(d)(2).

- "[A]s the conjunctive language in Civil Code section 1794 indicates, the statute itself provides an additional measure of damages beyond replacement or reimbursement and permits, at the option of the buyer, the Commercial Code measure of damages which includes 'the cost of repairs necessary to make the goods conform.' " (*Krotin, supra,* 38 Cal.App.4th at p. 302, internal citation omitted.)

- "[I]n the usual situation, emotional distress damages are *not* recoverable under the Song-Beverly Consumer Warranty Act." (*Music Acceptance Corp. v. Lofing* (1995) 32 Cal.App.4th 610, 625, fn. 15 [39 Cal.Rptr.2d 159], emphasis in original; see also *Kwan v. Mercedes-Benz of N. Am.* (1994) 23 Cal.App.4th 174, 187–192 [28 Cal.Rptr.2d 371].)

- "[F]inding an implied prohibition on recovery of finance charges would be contrary to both the Song-Beverly Consumer Warranty Act's remedial purpose and section 1793.2(d)(2)(B)'s description of the refund remedy as restitution. A more reasonable construction is that the Legislature intended to allow a buyer to recover the entire amount actually expended for a new motor vehicle, including paid finance charges, less any of the expenses expressly excluded by the statute." (*Mitchell v. Blue Bird Body Co.* (2000) 80 Cal.App.4th 32, 37 [95 Cal.Rptr.2d 81].)

- "[Defendant] argues that [plaintiff] would receive a windfall if he is not required to pay for using the car after his buyback request. But to give [defendant] an offset for that use would reward it for its delay in replacing the car or refunding [plaintiff]'s money when it had complete control over the length of that delay, and an affirmative statutory duty to replace or refund promptly." (*Jiagbogu v.*

Mercedes-Benz USA (2004) 118 Cal.App.4th 1235, 1244 [13 Cal.Rptr.3d 679].)

- "We conclude that in an action pursuant to section 1794, neither a trade-in credit nor sale proceeds reduce the statutory restitution remedy set forth in section 1793.2, subdivision (d)(2) at least where, as here, a consumer has been forced to trade in or sell a defective vehicle due to the manufacturer's failure to comply with the Act." (*Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792, 801 [318 Cal.Rptr.3d 483, 543 P.3d 935].)

- "[T]he imposition of a requirement that [plaintiff] mitigate his damages so as to avoid rental car expenses—after [defendant] had a duty to respond promptly to [plaintiff]'s demand for restitution—would reward [defendant] for its delay in refunding [plaintiff]'s money." (*Lukather v. General Motors, LLC* (2010) 181 Cal.App.4th 1041, 1053 [104 Cal.Rptr.3d 853].)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Sales, §§ 331, 334

1 California UCC Sales & Leases (Cont.Ed.Bar) Warranties, § 3.90

8 California Forms of Pleading and Practice, Ch. 91, *Automobiles: Actions Involving Defects and Repairs*, § 91.18 (Matthew Bender)

20 California Points and Authorities, Ch. 206, *Sales*, §§ 206.127, 206.128 (Matthew Bender)

California Civil Practice: Business Litigation § 53:26 (Thomson Reuters)

5022. Introduction to General Verdict Form

I will give you [a] general verdict form[s]. The form[s] ask[s] you to find either in favor of [*name of plaintiff*] or [*name of defendant*]. [It also asks you to answer [an] additional question[s] regarding [*specify, e.g., the right to punitive damages*].] I have already instructed you on the law that you are to refer to in making your determination[s].

At least nine of you must agree on your decision [and in answering the additional question[s]]. [If there is more than one question on the verdict form, as long as nine of you agree on your answers to each question, the same nine do not have to agree on each answer.]

In reaching your verdict [and answering the additional question[s]], you must decide whether the party with the burden of proof has proved all of the necessary facts in support of each required element of [his/her/its] claim or defense. You should review the elements addressed in the other instructions that I have given you and determine if at least nine of you agree that each element has been proven by the evidence received in the trial. The same nine do not have to agree on each element.

When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the [bailiff/clerk/court attendant] ~~that you are ready to present your verdict in the courtroom~~.

New May 2018; Revised May 2019, November 2024

Directions for Use

If a general verdict will be used, this instruction may be given to guide the jury on how to go about reaching a verdict. With a general verdict, there is a danger that the jury will shortcut the deliberative process of carefully looking at each element of each claim or defense and simply vote for the plaintiff or for the defendant. This instruction directs the jury to approach its task as if a special verdict were being used and questions on each element of each claim or defense had to be answered. This instruction assumes that the rule applicable to special verdicts, that the same nine jurors do not need to agree on every element of a claim as long as there are nine in favor of each (see *Juarez v. Superior Court* (1982) 31 Cal.3d 759, 768–769 [183 Cal.Rptr. 852, 647 P.2d 128]; CACI No. 5012, *Introduction to Special Verdict Form*), would apply to deliberations using a general verdict.

This purpose of this instruction is to lessen the possibility that the "paradox of shifting majorities" will happen. This paradox occurs when the same jury analyzing the same evidence would find liability with a special verdict, but not with a general verdict. The possibility arises because with a special verdict, a juror who votes no on one question but is in a minority of three or fewer must continue to deliberate and vote on all of the remaining questions.

If, for example, the vote on element 3 is 9-3 yes with jurors 10-12 voting no, and the vote on element 4 is 11-1 yes with juror 1 voting no, there will be liability with a special verdict because each element has received nine yes votes. But if a general verdict is used, there would be no liability because only eight

jurors have found true every element of the claim. The California Supreme Court has found this result to be proper with regard to special verdicts. (See *Juarez, supra,* 31 Cal.3d at p. 768.) With a general verdict, if the jury votes on each element of each claim or defense, it is more likely to find nine votes for each element, even though it may be a different nine each time.

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

- "[I]f nine identical jurors agree that a party is negligent and that such negligence is the proximate cause of the other party's injuries, special verdicts apportioning damages are valid so long as they command the votes of *any* nine jurors. To hold otherwise would be to prohibit jurors who dissent on the question of a party's liability from participation in the important remaining issue of allocating responsibility among the parties, a result that would deny all parties the right to a jury of 12 persons deliberating on all issues." (*Juarez, supra,* 31 Cal.3d at p. 768, original italics.)

- "To determine whether a general verdict is supported by the evidence it is necessary to ascertain the issues embraced within the verdict and measure the sufficiency of the evidence as related to those issues. For this purpose reference may be had to the pleadings, the pretrial order and the charge to the jury. A general verdict implies a finding of every fact essential to its validity which is supported by the evidence. Where several issues responsive to different theories of law are presented to the jury and the evidence is sufficient to support facts sustaining the verdict under one of those theories, it will be upheld even though the evidence is insufficient to support facts sustaining it under any other theory." (*Owens v. Pyeatt* (1967) 248 Cal.App.2d 840, 844 [57 Cal.Rptr. 100], internal citations omitted.)

- "Implicit in [general] verdicts is the presumption that 'all material facts in issue as to which substantial evidence was received were determined in a manner consistent and in conformance with the verdict.' " (*Coorough v. De Lay* (1959) 171 Cal.App.2d 41, 45 [339 P.2d 963].)

- "A general verdict imports a finding in favor of the winning party on all the averments of his pleading material to his recovery." (*Behr v. County of Santa Cruz* (1959) 172 Cal.App.2d 697, 712 [342 P.2d 987].)

Secondary Sources

7 Witkin, California Procedure (5th ed. 2008) Trial, § 338

Wegner et al., California Practice Guide: Civil Trials & Evidence, Ch. 17-A, *Verdicts*, ¶ 17:1 et seq. (The Rutter Group)

Haning et al., California Practice Guide: Personal Injury Ch. 9-M, *Verdicts and Judgment,* ¶ 9:645 et seq. (The Rutter Group)

4 California Trial Guide, Unit 91, *Jury Deliberations and Rendition of Verdict,* § 91.21 (Matthew

Bender)

28 California Forms of Pleading and Practice, Ch. 326A, *Jury Verdicts*, § 326A.11 et seq. (Matthew Bender)

Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 18, *Jury Verdicts,* 18.03 et seq.

Item number: 02

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 10/4/24

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Jury Instructions: Civil Jury Instructions (Release 46)

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Judicial Council of California Civil Jury Instructions (CACI): Revise CACI Nos. 370, 371, 373, 374, VF-304, 1009A, 1009B, 1009D, 1246, 1247, 3708, 3713, and 4328, and add CACI Nos. 1126 and VF-4328.

Committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions

Staff contact (name, phone and e-mail)*: Eric Long, 415-865-7691, eric.long@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 10/26/23
Project description from annual agenda: 1. Maintenance—Case Law; 2. Maintenance—Legislation; 4. Maintenance—Comments from Users; 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Sources

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was
  ☒ reviewed by EGG on *(date)* 9/19/24
  ☒ approved by Office Director (or Designee) (*name*) Deborah Brown
  on (date) 9/24/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

☐ This proposal may require changes or additions to self-help web content.

Judicial Council *of* California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-074
For business meeting on November 15, 2024

Title
Jury Instructions: Civil Jury Instructions (release 46)

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Civil Jury Instructions (CACI)

Recommended by
Advisory Committee on Civil Jury Instructions
Hon. Adrienne M. Grover, Chair

Agenda Item Type
Action Required

Effective Date
November 15, 2024

Date of Report
September 25, 2024

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

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions and verdict forms prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the official 2025 edition of the *Judicial Council of California Civil Jury Instructions* (*CACI*).

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective November 15, 2024, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court:

1. Revisions to 13 instructions and verdict forms: CACI Nos. 370, 371, 373, 374, VF-304, 1009A, 1009B, 1009D, 1246, 1247, 3708, 3713, and 4328; and

2. Addition of 1 instruction and 1 verdict form: CACI No. 1126 and VF-4328.

A table of contents and the new and revised civil jury instructions and verdict forms are attached at pages 6–56.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.58 of the California Rules of Court, which established the advisory committee and its charge.[1] At that meeting, the council approved *CACI* under what is now rule 2.1050 of the California Rules of Court. Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CACI* to ensure that the instructions remain clear, accurate, current, and complete.

This is release 46 of *CACI*. The council approved release 45 at its May 2024 meeting.

Analysis/Rationale

A total of 15 instructions and verdict forms are presented in this release. In addition, at its meeting on October 4, 2024, the Judicial Council's Rules Committee approved changes to 4 other instructions under a delegation of authority from the council to the Rules Committee.[2]

The recommended revisions and additions to the instructions are based on comments or suggestions from justices, judges, attorneys, and bar associations; proposals by staff and committee members; and recent developments in the law. Below is a summary of the more significant additions and changes recommended to the council.

Revised instructions

***CACI No. 1009A,* Liability to Employees of Independent Contractors for Unsafe Concealed Conditions**

The committee incorporated changes to the instruction based on a recent Court of Appeal case, *Acosta v. MAS Realty, LLC*.[3] Based on the new decision, the committee recommends revising element 3 to include a description of the independent contractor's duty to inspect the worksite for safety issues, deleting element 4, and deleting from the Directions for Use a cross-reference to

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[1] Rule 10.58(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's civil jury instructions."

[2] At its October 20, 2006, meeting, the Judicial Council delegated to the Rules Committee (formerly called the Rules and Projects Committee, or RUPRO) the final authority to approve nonsubstantive technical changes and corrections and minor substantive changes to jury instructions unlikely to create controversy. The council also gave the Rules Committee the authority to delegate to the jury instructions advisory committees the authority to review and approve nonsubstantive grammatical and typographical corrections and other similar changes to the jury instructions, which the Rules Committee has done.

Under the implementing guidelines that the Rules Committee approved on December 14, 2006, which were submitted to the council on February 15, 2007, the Rules Committee has the final authority to approve (among other things) additional cases and statutes cited in the Sources and Authority and additions or changes to the Directions for Use.

[3] (2023) 96 Cal.App.5th 635 [314 Cal.Rptr.3d 507].

the Vicarious Liability series. Following public comment, the committee also recommends refining the phrasing of the second paragraph of the proposed Directions for Use on the contractor's duty to inspect the worksite and the potential need for modification of element 3 if the means of accessing the worksite is at issue.

***CACI No. 4328,* Affirmative Defense—Victim of Abuse or Violence**

In May 2024, the committee recommended revisions to this instruction to conform it to recent legislation, which expanded a tenant's affirmative defense to eviction when, among other things, an eviction is based on acts of violence or abuse.[4] Commenters in the previous public comment and release cycle advocated for the instruction to address a new procedure for a partial eviction. Specifically, when the perpetrator and the victim are both tenants in residence of the same unit, the court is directed to proceed with a new process laid out in Code of Civil Procedure section 1174.27. The process applies only to unlawful detainer actions (1) that involve residential premises; (2) that are based on an act of abuse against a tenant or related person; and (3) in which the tenant-defendant has invoked section 1161.3(d)(2)'s affirmative defense. If those three conditions are met, section 1174.27 allows a court to order an eviction of only the perpetrator of abuse or violence if the perpetrator and victim are tenants in residence of the same dwelling unit. The court also has the option to permanently bar the perpetrator from entering the residential premises and order that the remaining occupants not permit or invite the perpetrator to live in the dwelling unit. The committee recommends an optional sentence alerting the jury to the possibility of that remedy if it is applicable and explaining that the judge will rely on the jury for factual determinations. The committee also recommends new content in the Directions for Use about section 1174.27's partial eviction remedy and procedure.

New instructions

***CACI No. 1126,* Failure to Warn of a Dangerous Roadway Condition Resulting From an Approved Design—Essential Factual Elements**

This new instruction is based on a claim for failure to warn of a dangerous condition on a public roadway, originally recognized by the Supreme Court in *Cameron v. State*[5] and reaffirmed last year by the Supreme Court in *Tansavatdi v. City of Rancho Palos Verdes*.[6] The court in *Tansavatdi* held that a failure to warn claim exists even if the dangerous condition is covered by design immunity.[7] Commenters, including the California Department of Transportation, made suggestions that do not reflect the holdings of the Supreme Court in *Tansavatdi* and *Cameron*.

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[4] Sen. Bill 1017 (Stats. 2022, ch. 558); Assem. Bill 1756 (Stats. 2023, ch. 478). SB 1017 expanded the law to include abuse against a tenant's immediate family member in addition to abuse against a tenant and a tenant's household member. (Code Civ. Proc., § 1161.3(b).) AB 1756, a judiciary omnibus bill, clarified the provision in section 1161.3(d), which applied only if the *landlord* violated section 1161.3(b). Section 1161.3(d) now states: "A defendant in an unlawful detainer action arising from a landlord's termination of a tenancy or failure to renew a tenancy that is based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member may raise an affirmative defense as [specified]."

[5] (1972) 7 Cal.3d 318 [102 Cal.Rptr. 305, 497 P.2d 777].

[6] (2023) 14 Cal.5th 639 [307 Cal.Rptr.3d 346, 527 P.3d 873].

[7] *Ibid.* at p. 647.

Commenters also suggested that the instruction address a public entity's affirmative defense of design immunity. An existing instruction, CACI No. 1123, *Affirmative Defense—Design Immunity (Gov. Code, § 830.6)*, states the elements of the defense. The committee recommends a cross-reference to that instruction and a discussion in the Directions for Use on the issue of design immunity. The court in *Tansavatdi* declined to express a view on whether or how design immunity might affect a failure to warn claim when the presence or absence of signs was a considered element of the design because that issue was not before the court.[8]

VF-4328, Affirmative Defense—Victim of Abuse or Violence

Commenters in the previous public comment and release cycle suggested a new verdict form addressing the affirmative defense set out in CACI No. 4328 and asked that it cover the requirements for partial eviction of the perpetrator alone under Code of Civil Procedure section 1174.27. The committee recommends a new verdict form with several optional elements because the complex statutory scheme has different requirements depending on whether the perpetrator of abuse or violence resides or does not reside with the tenant (or the tenant's immediate family member or household member). As with most verdict forms in CACI, it is intended as a model only. Rarely will it be used without modifications to fit the circumstances of a particular case.

Policy implications

The committee endeavors to accurately state the law in a way that is understandable to the average juror. Except for language choices, there are generally no policy implications.

Comments

The proposed additions and revisions in *CACI* circulated for comment from July 24 through September 5, 2024. Comments were received from 11 different commenters: the California Department of Transportation, a superior court judge, a superior court management analyst, a law firm, 2 attorneys, 2 bar associations (California Lawyers Association and Orange County Bar Association), and 3 professional organizations (California Employment Lawyers Association, Civil Justice Association of California, and Consumer Attorneys of California). Some commenters submitted comments on multiple instructions and verdict forms, and some commented on only a single instruction. A chart of the comments and the committee's responses is attached at pages 57–127.

The committee evaluated all comments and, as a result, refined some of the instructions and verdict forms in this release. The committee also decided to defer two sets of instructions—four instructions in the Right of Privacy series and four instructions in the Trade Secrets series—for further consideration before recommending revisions, as explained below.

CACI Nos. 1803, 1804A, 1804B, and 1805

The committee reexamined these four instructions based on an attorney's challenge to the language of the First Amendment affirmative defense stated in CACI No. 1805, *Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III)*. The

[8] *Ibid.* at p. 661.

committee concluded that all four instructions would benefit from direct reference to the closely related right of publicity and recommended other clarifying changes. The California Lawyers Association (CLA) offered several suggestions that went beyond the scope of the invitation to comment. The committee would like to consider CLA's comments before making a recommendation so that additional public comment may be received on any proposed revisions.

CACI Nos. 4401, 4409, 4410, and VF-4400

The committee's proposal to revise these four Trade Secrets instructions based on a recent Court of Appeal decision[9] generated both opposition and support. Because at least two of the comments in opposition raise issues the committee has not fully considered, the committee recommends further deliberation on the scope and propriety of the changes before making a recommendation.

Alternatives considered

Rules 2.1050(e) and 10.58(a) of the California Rules of Court require the committee to update, revise, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. There are no alternative actions for the committee to consider. The committee did, however, consider suggestions from members of the legal community that did not result in recommendations for this release. As noted above, some suggestions were deferred for further consideration.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal.

Attachments and Links

1. CACI Nos. 370, 371, 373, 374, VF-304, 1009A, 1009B, 1009D, 1126, 1246, 1247, 3708, 3713, 4328, and VF-4328, at pages 6–56
2. Chart of comments, at pages 57–127

[9] *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556 [319 Cal.Rptr.3d 205].

TABLE OF CONTENTS
CIVIL JURY INSTRUCTIONS
Release 46; November 2024

370. Common Count: Money Had and Received

[*Name of plaintiff*] claims that [*name of defendant*] owes [him/her/*nonbinary pronoun*/it] money. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] received money that was intended to be used for the benefit of [*name of plaintiff*];**

2. **That the money was not used for the benefit of [*name of plaintiff*]; and**

3. **That [*name of defendant*] has not given the money to [*name of plaintiff*].**

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*New June 2005; Revised November 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 their case.

Do not give this instruction for a claim involving "consumer debt" incurred on or after July 1, 2024. (See Code Civ. Proc., § 425.30 [exempting "consumer debt" from "common counts"].)

Sources and Authority

- " '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.)

- " 'A cause of action for money had and received is stated if it is alleged [that] the defendant "is indebted to the plaintiff in a certain sum 'for money had and received by the defendant for the use of the plaintiff.' " …' The claim is viable ' "wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter." ' As juries are instructed in CACI No. 370, the plaintiff must prove that the defendant received money 'intended to

be used for the benefit of [the plaintiff],' that the money was not used for the plaintiff's benefit, and that the defendant has not given the money to the plaintiff." (*Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th 1439, 1454 [151 Cal.Rptr.3d 804], internal citations omitted.)

- " 'The action for money had and received is based upon an implied promise which the law creates to restore money which the defendant in equity and good conscience should not retain. The law implies the promise from the receipt of the money to prevent unjust enrichment. The measure of the liability is the amount received.' Recovery is denied in such cases unless the defendant himself has actually received the money." (*Rotea v. Izuel* (1939) 14 Cal.2d 605, 611 [95 P.2d 927], 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.)

- " 'This kind of action to recover back money which ought not in justice to be kept is very beneficial, and, therefore, much encouraged. It lies for money paid by mistake, or upon a consideration which happens to fail, or extortion, or oppression, or an undue advantage of the plaintiff's situation contrary to the laws made for the protection of persons under those circumstances.' " (*Minor v. Baldridge* (1898) 123 Cal. 187, 191 [55 P. 783], internal citation 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 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.)

- "The cause of action [for money had and received] is available where, as here, the plaintiff has paid money to the defendant pursuant to a contract which is void for illegality." (*Schultz v. Harney* (1994) 27 Cal.App.4th 1611, 1623 [33 Cal.Rptr.2d 276], internal citations omitted.)

- " 'It is well established in our practice that an action for money had and received will lie to recover money paid by mistake, under duress, oppression or where an undue advantage was taken of plaintiffs' situation whereby money was exacted to which the defendant had no legal right.' " (*J.C. Peacock, Inc. v. Hasko* (1961) 196 Cal.App.2d 353, 361 [16 Cal.Rptr. 518], internal citations omitted.)

Secondary Sources

4 Witkin, California Procedure (5th ed. 2008) Pleading, § 561

12 California Forms of Pleading and Practice, Ch. 121, *Common Counts*, §§ 121.24[1], 121.51 (Matthew Bender)

4 California Points and Authorities, Ch. 43, *Common Counts and Bills of Particulars*, § 43.25 (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

371. Common Count: Goods and Services Rendered

[*Name of plaintiff*] claims that [*name of defendant*] owes [him/her/*nonbinary pronoun*/it] money for [goods delivered/services rendered]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] requested, by words or conduct, that [*name of plaintiff*] [perform services/deliver goods] for the benefit of [*name of defendant*];**

2. **That [*name of plaintiff*] [performed the services/delivered the goods] as requested;**

3. **That [*name of defendant*] has not paid [*name of plaintiff*] for the [services/goods]; and**

4. **The reasonable value of the [goods/services] that were provided.**

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*New June 2005; Revised November 2024**

Directions for Use

Do not give this instruction for a claim involving "consumer debt" incurred on or after July 1, 2024. (See Code Civ. Proc., § 425.30 [exempting "consumer debt" from "common counts"].)

Sources and Authority

- " ' "Quantum meruit refers to the well-established principle that 'the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered.' [Citation.] To recover in quantum meruit, a party need not prove the existence of a contract [citations], but it must show the circumstances were such that 'the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made.' " [Citation.]' 'The underlying idea behind quantum meruit is the law's distaste for unjust enrichment. If one has received a benefit which one may not justly retain, one should "restore the aggrieved party to his [or her] former position by return of the thing or its equivalent in money." [Citation.]' " ' "The measure of recovery in *quantum meruit* is the reasonable value of the services rendered *provided* they were of direct benefit to the defendant." [Citations.]' In other words, quantum meruit is equitable payment for services already rendered." (*E. J. Franks Construction, Inc. v. Sahota* (2014) 226 Cal.App.4th 1123, 1127–1128 [172 Cal.Rptr.3d 778], original italics, internal citations omitted.)

- " '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.)

- "To recover on a claim for the reasonable value of services under a quantum meruit theory, a plaintiff must establish both that he or she was acting pursuant to either an express or implied request for services from the defendant and that the services rendered were intended to and did benefit the defendant." (*Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 794 [9 Cal.Rptr.3d 734], internal citation omitted.)

- "[W]here services have been rendered under a contract which is unenforceable because not in writing, an action generally will lie upon a common count for quantum meruit." (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 996 [90 Cal.Rptr.2d 665].)

- "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.)

- " '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 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 (5th ed. 2008) Pleading, § 554

12 California Forms of Pleading and Practice, Ch. 121, *Common Counts*, §§ 121.25, 121.55–121.58 (Matthew Bender)

4 California Points and Authorities, Ch. 43, *Common Counts and Bills of Particulars*, §§ 43.33, 43.40 (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

373. Common Count: Account Stated

An account stated is an agreement between the parties, based on prior transactions between them establishing a debtor-creditor relationship, that a particular amount is due and owing from the debtor to the creditor. The agreement may be oral, in writing, or implied from the parties' words and conduct.

[*Name of plaintiff***] claims that [***name of defendant***] owes [him/her/***nonbinary pronoun***/it] money on an account stated. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] owed [***name of plaintiff***] money from previous financial transactions;**

2. **That [***name of plaintiff***] and [***name of defendant***], by words or conduct, agreed that the amount that [***name of plaintiff***] claimed to be due from [***name of defendant***] was the correct amount owed;**

3. **That [***name of defendant***], by words or conduct, promised to pay the stated amount to [***name of plaintiff***];**

4. **That [***name of defendant***] has not paid [***name of plaintiff***] [any/all] of the amount owed under this account; and**

5. **The amount of money [***name of defendant***] owes [***name of plaintiff***].**

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

Directions for Use

Do not give this instruction for a claim involving "consumer debt" incurred on or after July 1, 2024. (See Code Civ. Proc., § 425.30 [exempting "consumer debt" from "common counts"].)

Sources and Authority

- " 'An account stated is an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing. [Citation.] To be an account stated, "it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing." [Citation.]' " (*Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491 [213 Cal.Rptr.3d 899].)

- "The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or

implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due." (*Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600 [76 Cal.Rptr. 663], internal citations omitted.)

- "The agreement of the parties necessary to establish an account stated need not be express and frequently is implied from the circumstances. In the usual situation, it comes about by the creditor rendering a statement of the account to the debtor. If the debtor fails to object to the statement within a reasonable time, the law implies his agreement that the account is correct as rendered." (*Zinn, supra,* 271 Cal.App.2d at p. 600, internal citations omitted.)

- "An account stated is an agreement, based on the prior transactions between the parties, that the items of the account are true and that the balance struck is due and owing from one party to another. When the account is assented to, ' "it becomes a new contract. An action on it is not founded upon the original items, but upon the balance agreed to by the parties. ..." Inquiry may not be had into those matters at all. It is upon the new contract by and under which the parties have adjusted their differences and reached an agreement.' " (*Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786–787 [163 Cal.Rptr. 483], internal citations omitted.)

- "To be an account stated, 'it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing.' The agreement necessary to establish an account stated need not be express and is frequently implied from the circumstances. When a statement is rendered to a debtor and no reply is made in a reasonable time, the law implies an agreement that the account is correct as rendered. Actions on accounts stated frequently arise from a series of transactions which also constitute an open book account. However, an account stated may be found in a variety of commercial situations. The acknowledgement of a debt consisting of a single item may form the basis of a stated account. The key element in every context is agreement on the final balance due." (*Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 752–753 [241 Cal.Rptr. 883], internal citations omitted.)

- "An account stated need not be submitted by the creditor to the debtor. A statement expressing the debtor's assent and acknowledging the agreed amount of the debt to the creditor equally establishes an account stated." (*Truestone, Inc. v. Simi West Industrial Park II* (1984) 163 Cal.App.3d 715, 726 [209 Cal.Rptr. 757], internal citations omitted.)

- " '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.)

- "The account stated may be attacked only by proof of 'fraud, duress, mistake, or other grounds cognizable in equity for the avoidance of an instrument.' The defendant 'will not be heard to answer

when action is brought upon the account stated that the claim or demand was unjust, or invalid.' " (*Gleason, supra,* 103 Cal.App.3d at p. 787, internal citations omitted.)

- "An account stated need not cover all the dealings or claims between the parties. There may be a partial settlement and account stated as to some of the transactions." (*Gleason, supra,* 103 Cal.App.3d at p. 790, internal citation 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 (5th ed. 2008) Pleading, § 561

1 Witkin, Summary of California Law (11th ed. 2017) Contracts, §§ 1003, 1004

1 California Forms of Pleading and Practice, Ch. 8, *Accounts Stated and Open Accounts*, §§ 8.10, 8.40–8.46 (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

374. Common Count: Mistaken Receipt

[*Name of plaintiff*] claims that [*name of defendant*] owes [him/her/*nonbinary pronoun*/it] money [that was paid/for goods that were received] by mistake. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] [paid [*name of defendant*] money/sent goods to [*name of defendant*]] by mistake;**

2. **That [*name of defendant*] did not have a right to [that money/the goods];**

3. **That [*name of plaintiff*] has asked [*name of defendant*] to return the [money/goods];**

4. **That [*name of defendant*] has not returned the [money/goods] to [*name of plaintiff*]; and**

5. **The amount of money that [*name of defendant*] owes [*name of plaintiff*].**

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*New December 2005; Revised November 2024**

Directions For Use

Do not give this instruction for a claim involving "consumer debt" incurred on or after July 1, 2024. (See Code Civ. Proc., § 425.30 [exempting "consumer debt" from "common counts"].)

Sources and Authority

- " '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 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.)

- "It is well settled that no contract is necessary to support an action for money had and received other than the implied contract which results by operation of law where one person receives the money of another which he has no right, conscientiously, to retain. Under such circumstances the law will imply a promise to return the money. The action is in the nature of an equitable one and is based on the fact that the defendant has money which, in equity and good conscience, he ought to pay to the plaintiffs. Such an action will lie where the money is paid under a void agreement, where it is obtained by fraud or where it was paid by a mistake of fact." (*Stratton v. Hanning* (1956) 139 Cal.App.2d 723, 727 [294 P.2d 66], internal citations omitted.)

- ~~Restatement First of Restitution, section 28, provides:~~

  ~~A person who has paid money to another because of a mistake of fact and who does not obtain what he expected in return is entitled to restitution from the other if the mistake was induced:~~

  ~~(a) by the fraud of the payee, or~~

  ~~(b) by his innocent and material misrepresentation, or~~

  ~~(c) by the fraud or material misrepresentation of a person purporting to act as the payee's agent, or~~

  ~~(d) by the fraud or material misrepresentation of a third person, provided that the payee has notice of the fraud or representation before he has given or promised something of value.~~

- "Money paid upon a mistake of fact may be recovered under the common count of money had and received. The plaintiff, however negligent he may have been, may recover if his conduct has not altered the position of the defendant to his detriment." (*Thresher v. Lopez* (1921) 52 Cal.App. 219, 220 [198 P. 419], internal citations omitted.)

- " '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.)

- "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

Restatement First of Restitution, section 28

4 Witkin, California Procedure (5th ed. 2008) Pleading, § 561

12 California Forms of Pleading and Practice, Ch. 121, *Common Counts*, § 121.25 (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-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*] [*specify conduct that plaintiff claims prevented plaintiff from receiving the benefits under 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.

~~6~~7. **In [***insert specified conduct from question 6***], ~~D~~did [***name of defendant***] ~~unfairly interfere with [***name of plaintiff***]'s right to receive the benefits of the contract~~ fail to act fairly and in good faith?**
____ Yes ____ No

If your answer to question ~~6~~7 is yes, then answer question ~~7~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~7~~8. **Was [***name of plaintiff***] harmed by [***name of defendant***]'s ~~interference~~ conduct?**
____ Yes ____ No

If your answer to question ~~7~~8 is yes, then answer question ~~8~~9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~9. **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, November 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 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~~9.

If specificity is not required, users do not have to itemize the damages listed in question ~~8~~9. 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].)

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

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[*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 through a reasonable inspection of the worksite;**

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~~5. **That [*name of plaintiff*] was harmed; and**

~~7~~6. **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, November 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*. 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's providing defective equipment, see CACI No. 1009D, *Liability to Employees of Independent Contractors for Unsafe Conditions—Defective Equipment*.

Element~~s~~ 3 ~~and 4~~ expresses 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]; *Acosta v. MAS Realty, LLC* (2023) 96 Cal.App.5th 635, 659 [314 Cal.Rptr.3d 507] ["[A] contractor has a

duty to inspect the worksite to identify safety hazards before beginning work"].) The duty to inspect the worksite includes the duty to inspect the means to access the worksite. (*Acosta, supra,* 96 Cal.App.5th at p. 662.) When an employee alleges injury due to an unsafe concealed condition encountered while accessing the worksite, the court may wish to modify element 3 to include a description of the means to access the worksite.

~~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 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.)

- "[A]n independent contractor does not have a duty to inspect all of the landowner's property or to identify hazards wholly outside his area of expertise. But a landowner who hires an independent contractor 'presumptively delegates to that contractor its tort law duty to provide a safe workplace for the contractor's employees,' and thus the independent contractor has a duty to determine whether its employees can safely perform the work they have been hired to do. That includes a duty to inspect not only the worksite itself, but the 'means to access the worksite.' " (*Acosta, supra,* 96 Cal.App.5th at pp. 661–662, internal citations omitted.)

- "Horizon, as the independent contractor hired by defendants, had a duty to ensure a safe workplace for its employees and is deemed to have been aware of any hazards that a reasonable inspection of the workplace would have revealed. Whether the independent contractor *actually* inspected, or whether an employee of the independent contractor *actually* communicated an unsafe condition to the contractor, is irrelevant—what matters is whether the hazard would have been revealed by a reasonable inspection." (*Acosta, supra,* 96 Cal.App.5th at p. 663, original italics.)

- "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)

1009B. Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by an unsafe condition while employed by [***name of contractor***] and working on [***specify nature of work that defendant hired the contractor to perform***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] retained some control over [***name of contractor***]'s manner of performance of [***specify nature of contracted work***];**

2. **That [***name of defendant***] actually exercised [his/her/***nonbinary pronoun***/its] retained control over that work by [***specify alleged negligence of defendant***];**

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

4. **That [***name of defendant***]'s negligent exercise of [his/her/***nonbinary pronoun***/its] retained control affirmatively contributed to [***name of plaintiff***]'s harm.**

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*Derived from former CACI No. 1009 April 2007; Revised April 2009, December 2010, December 2011, May 2017, May 2022, November 2024**

Directions for Use

This instruction is for use if a dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. The basis of liability is that the defendant retained control over the manner of performance of some part of the work entrusted to the contractor. (*Sandoval v. Qualcomm Inc.* (2021) 12 Cal.5th 256, 273 [283 Cal.Rptr.3d 19, 494 P.3d 487].) Both retaining control and actually exercising control over some aspect of the work is required because hirers who fully and effectively delegate work to a contractor owe no tort duty to that contractor's workers. (See *Ibid.*) If there is a question of fact regarding whether the defendant entrusted the work to the contractor, the instruction should be modified. 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 unsafe conditions not discoverable by the plaintiff's employer, see CACI No. 1009A, *Liability to Employees of Independent Contractors for Unsafe Concealed Conditions*. For an instruction for injuries based on the property owner's providing defective 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.~~

The hirer's exercise of retained control must have "affirmatively contributed" to the plaintiff's injury. (*Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 202 [115 Cal.Rptr.2d 853, 38 P.3d 1081]; see *Sandoval, supra,* 12 Cal.5th at p. 277.) However, the affirmative contribution need not be active conduct but may be a failure to act. (*Hooker, supra,* 27 Cal.4th at p. 212, fn. 3; see *Sandoval, supra,* 12 Cal.5th at p. 277.) "Affirmative contribution" means that there must be causation between the

hirer's exercising retained control and the plaintiff's injury. Modification may be required if the defendant's failure to act is alleged pursuant to *Hooker*.

Sources and Authority

- "A hirer 'retains control' where it retains a sufficient degree of authority over the manner of performance of the work entrusted to the contractor. … So 'retained control' refers specifically to a hirer's authority over work entrusted to the contractor, i.e., work the contractor has agreed to perform. For simplicity we will often call this the 'contracted work'—irrespective of whether it's set out in a written contract or arises from an informal agreement. A hirer's authority over noncontract work—although potentially giving rise to other tort duties—thus does not give rise to a retained control duty unless it has the effect of creating authority over the contracted work." (*Sandoval, supra,* 12 Cal.5th at pp. 274–275.)

- "We conclude that a hirer of an independent contractor is not liable to an employee of the contractor merely because the hirer retained control over safety conditions at a worksite, but that a hirer is liable to an employee of a contractor insofar as a hirer's exercise of retained control *affirmatively contributed* to the employee's injuries." (*Hooker, supra,* 27 Cal.4th at p. 202, original italics.)

- "Imposing tort liability on a hirer of an independent contractor when the hirer's conduct has affirmatively contributed to the injuries of the contractor's employee is consistent with the rationale of our decisions in *Privette*, *Toland* and *Camargo* because the liability of the hirer in such a case is not ' "in essence 'vicarious' or 'derivative' in the sense that it derives from the 'act or omission' of the hired contractor." ' To the contrary, the liability of the hirer in such a case is *direct* in a much stronger sense of that term." (*Hooker, supra,* 27 Cal.4th at pp. 211–212, original italics, internal citations and footnote omitted.)

- "Contract workers must prove that the hirer *both* retained control *and* actually exercised that retained control in such a way as to affirmatively contribute to the injury." (*Sandoval, supra,* 12 Cal.5th at p. 276, original italics.)

- "Such affirmative contribution need not always be in the form of actively directing a contractor or contractor's employee. There will be times when a hirer will be liable for its omissions. For example, if the hirer promises to undertake a particular safety measure, then the hirer's negligent failure to do so should result in liability if such negligence leads to an employee injury." (*Hooker, supra,* 27 Cal.4th at p. 212, fn. 3.)

- " 'Affirmative contribution' means that the hirer's exercise of retained control contributes to the injury in a way that isn't merely derivative of the contractor's contribution to the injury. Where the contractor's conduct is the immediate cause of injury, the affirmative contribution requirement can be satisfied only if the hirer in some respect induced—not just failed to prevent—the contractor's injury-causing conduct." (*Sandoval, supra,* 12 Cal.5th at p. 277, internal citation omitted.)

- "If a hirer entrusts work to an independent contractor, but retains control over safety conditions at

a jobsite and then negligently exercises that control in a manner that affirmatively contributes to an employee's injuries, the hirer is liable for those injuries, based on its own negligent exercise of that retained control." (*Tverberg v. Fillner Constr., Inc.* (2012) 202 Cal.App.4th 1439, 1446 [136 Cal.Rptr.3d 521].)

- "[A]ffirmative contribution is a different sort of inquiry than substantial factor causation. For instance, a fact finder might reasonably conclude that a hirer's negligent hiring of the contractor was a substantial factor in bringing about a contract worker's injury, and yet negligent hiring is not affirmative contribution because the hirer's liability is essentially derivative of the contractor's conduct. Conversely, affirmative contribution does not itself require that the hirer's contribution to the injury be substantial." (*Sandoval, supra,* 12 Cal.5th at p. 278, internal citations omitted.)

- "A hirer's failure to correct an unsafe condition, by itself, does not establish an affirmative contribution." (*Khosh v. Staples Construction Co., Inc.* (2016) 4 Cal.App.5th 712, 718 [208 Cal.Rptr.3d 699].)

- "On facts [showing a contractor's awareness of a hazard], then, it is the contractor's responsibility, not the hirer's responsibility, to take the necessary precautions to protect its employees from a known workplace hazard. And should the contractor fail to take the necessary precautions, … its employees cannot fault the hirer for the contractor's own failure." (*McCullar v. SMC Contracting, Inc.* (2022) 83 Cal.App.5th 1005, 1017 [298 Cal.Rptr.3d 785].)

- "When the employer directs that work be done by use of a particular mode or otherwise interferes with the means and methods of accomplishing the work, an affirmative contribution occurs. When the hirer does not fully delegate the task of providing a safe working environment but in some manner actively participates in how the job is done, the hirer may be held liable to the employee if its participation affirmatively contributed to the employee's injury. [¶] By contrast, passively permitting an unsafe condition to occur rather than directing it to occur does not constitute affirmative contribution. The failure to institute specific safety measures is not actionable unless there is some evidence that the hirer or the contractor had agreed to implement these measures. Thus, the failure to exercise retained control does not constitute an affirmative contribution to an injury. Such affirmative contribution must be based on a negligent exercise of control. In order for a worker to recover on a retained control theory, the hirer must engage in some active participation." (*Tverberg, supra,* 202 Cal.App.4th at p. 1446, internal citations omitted.)

- "Although plaintiffs concede that [contractor] had exclusive control over how the window washing would be done, they urge that [owner] nonetheless is liable because it affirmatively contributed to decedent's injuries 'not [by] active conduct *but … in the form of an omission to act*.' Although it is undeniable that [owner]'s failure to equip its building with roof anchors contributed to decedent's death, *McKown* [*v. Wal-Mart Stores, Inc.* (2002) 27 Cal.4th 219] does not support plaintiffs' suggestion that a passive omission of this type is actionable. … Subsequent Supreme Court decisions … have repeatedly rejected the suggestion that the passive provision of an unsafe workplace is actionable. … Accordingly, the failure to provide safety equipment does not constitute an 'affirmative contribution' to an injury within the meaning of *McKown*." (*Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1093 [229 Cal.Rptr.3d 594],

original italics.)

- "[U]nder Government Code section 815.4, a public entity can be held liable under the retained control doctrine, provided a private person would be liable under the same circumstances. This means that the public entity must *negligently* exercise its retained control so as to affirmatively contribute to the injuries of the employee of the independent contractor." (*McCarty v. Department of Transportation* (2008) 164 Cal.App.4th 955, 985 [79 Cal.Rptr.3d 777], original italics.)

- "The *Privette* line of decisions establishes a presumption that an independent contractor's hirer 'delegates to that contractor its tort law duty to provide a safe workplace for the contractor's employees.'… [T]he *Privette* presumption affects the burden of producing evidence." (*Alvarez v. Seaside Transportation Services LLC* (2017) 13 Cal.App.5th 635, 642 [221 Cal.Rptr.3d 119], internal citations omitted.)

Secondary Sources

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 6-A, *Liability For Defective Conditions On Premises*, ¶ 6:1 et seq. (The Rutter Group)

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

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, § 381.23 (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)

1009D. Liability to Employees of Independent Contractors for Unsafe Conditions—Defective Equipment

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by an unsafe 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***] negligently provided unsafe equipment that contributed to [***name of plaintiff***]'s injuries;**

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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*Derived from CACI No. 1009B April 2009; Revised December 2011, November 2024**

Directions for Use

This instruction is for use if a dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. The basis of liability is that the defendant provided defective equipment. 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 unsafe concealed conditions not discoverable by the plaintiff's employer, see CACI No. 1009A, *Liability to Employees of Independent Contractors for Unsafe Concealed 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*.

~~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

- "[W]hen a hirer of an independent contractor, by negligently furnishing unsafe equipment to the contractor, affirmatively contributes to the injury of an employee of the contractor, the hirer should be liable to the employee for the consequences of the hirer's own negligence." (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 937 [22 Cal.Rptr.3d 530, 102 P.3d 915].)

- " '[W]here the hiring party actively contributes to the injury by supplying defective equipment, it is the hiring party's own negligence that renders it liable, not that of the contractor.' " (*McKown v. Wal-Mart Stores, Inc.* (2002) 27 Cal.4th 219, 225 [115 Cal.Rptr.2d 868, 38 P.3d 1094], internal citation omitted.)

Secondary Sources

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

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

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, § 381.23 (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*, § 178.24 (Matthew Bender)

1126. Failure to Warn of a Dangerous Roadway Condition Resulting From an Approved Design—Essential Factual Elements

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[*Name of plaintiff***] claims that [***name of defendant***] is responsible for [his/her/***nonbinary pronoun***/its] harm caused by [***name of defendant***]'s failure to warn of [***insert description of dangerous condition resulting from an approved design***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] had notice that its approved design created a dangerous condition;**

2. **That [***name of defendant***] failed to warn of the dangerous condition;**

3. **That the dangerous condition would not have been reasonably apparent to or anticipated by a person exercising due care;**

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

5. **That the absence of a warning was a substantial factor in causing [***name of plaintiff***]'s harm.**

New November 2024

Directions for Use

Give this instruction if the plaintiff claims that the public entity defendant failed to warn of a dangerous roadway condition resulting from an approved design, even if the approved design would otherwise be covered by design immunity. Whether this instruction should be given when a public entity produces evidence that it considered whether to provide a warning, in other words whether design immunity might affect a failure to warn claim, is unsettled. (*Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 661 [307 Cal.Rptr.3d 346, 527 P.3d 873] [expressing no view on the issue]; but cf. *Stufkosky v. Department of Transportation* (2023) 97 Cal.App.5th 492, 501 [315 Cal.Rptr.3d 331] [affirming summary judgment in favor of public entity on failure to warn claim].) For an instruction on design immunity, see CACI No. 1123, *Affirmative Defense—Design Immunity*.

Give CACI No. 1102, *Definition of "Dangerous Condition,"* and CACI No. 1103, *Notice*, to define a dangerous condition and actual and constructive notice in connection with this instruction.

Sources and Authority

- Liability of Public Entity for Dangerous Condition of Property. Government Code section 835.
- Actual Notice. Government Code section 835.2(a).

- Constructive Notice. Government Code section 835.2(b).

- Definitions. Government Code section 830.

- "[W]e conclude that where the state is immune from liability for injuries caused by a dangerous condition of its property because the dangerous condition was created as a result of a plan or design which conferred immunity under section 830.6, the state may nevertheless be liable for failure to warn of this dangerous condition where the failure to warn is negligent and is an independent, separate, concurring cause of the accident." (*Cameron v. State of California* (1972) 7 Cal.3d 318, 329 [102 Cal.Rptr. 305, 497 P.2d 777].)

- "[W]hile *Cameron* [*v. State of California*] generally permits claims for failure to warn of a dangerous traffic condition that is subject to design immunity, a plaintiff pursuing such a claim must nonetheless prove various elements that are not present when pursuing a claim alleging a public entity *created* that dangerous condition: (1) the public entity had actual or constructive notice that the approved design resulted in a dangerous condition; (2) the dangerous condition qualified as a concealed trap, i.e., 'would not [have been] reasonably apparent to, and would not have been anticipated by, a person exercising due care'; and (3) the absence of a warning was a substantial factor in bringing about the injury." (*Tansavatdi, supra,* 14 Cal.5th at pp. 661–662, original italics.)

- "In sum, we find nothing illogical about interpreting sections 830.6 and 835 in a manner that compels government entities to provide a warning when they know (or should know) that an approved roadway design presents concealed dangers to the public." (*Tansavatdi, supra,* 14 Cal.5th at p. 668.)

- "Finally, we note that while *Cameron* concluded a public entity can be held liable for failing to warn of a dangerous roadway feature that was the result of a properly approved design, our decision did not address whether design immunity might apply if the public entity is able to show that the presence or absence of warning signs was part of the approved design. The plaintiffs in *Cameron* specifically alleged that the state's failure to warn was not part of any approved plan, and they acknowledged in their petition for review that section 830.6 might apply 'where the presence or absence of signs was a considered element of the plan or design.' In this case, the City's summary judgment motion argued only that section 830.6 shields public entities from failure to warn claims involving an approved feature of the roadway; the City did not argue that the evidence offered in support of its design immunity defense showed city officials had considered whether to provide a warning about the discontinuance of the bike lane. Thus, as in *Cameron*, we have no occasion to consider, and express no view on, how design immunity might affect a failure to warn claim when a public entity does produce evidence that it considered whether to provide a warning." (*Tansavatdi, supra,* 14 Cal.5th at p. 661, internal citation and footnote omitted].)

Secondary Sources

5 Witkin, Summary of California Law (12th ed. 2018), Ch. 9, *Torts*, §§ 316, 323, 335

California Causes of Action, Ch. 18, Government Tort Liability, §§ 3:00, 3.60

Haning et al., California Practice Guide: Personal Injury, Ch. 2(III)-D, *Government Entity Liability and*

Immunity (The Rutter Group)

California Civil Practice: Torts § 31:20 (Thomson Reuters)

1246. Affirmative Defense—Design Defect—Government Contractor

[*Name of defendant*] may not be held liable for design defects in the [*product*] if it proves all of the following:

1. **That [*name of defendant*] contracted with the United States government to provide the [*product*] for military use;**

2. **That the United States approved reasonably precise specifications for the [*product*];**

3. **That the [*product*] conformed to those specifications; and**

[4. That [*name of defendant*] warned the United States about the dangers in the use of the [*product*] that were known to [*name of defendant*] but not to the United States.]

[*or*]

[4. That the United States was aware of the dangers in the use of the [*product*].]

New June 2010; Revised December 2010, November 2024

Directions for Use

This instruction is for use if the defendant's product whose design is challenged was provided to the United States government for military use. The essence of the defense is that the plaintiff should not be able to impose on a government contractor a duty under state law that is contrary to the duty imposed by the government contract. (~~See~~ *Boyle v. United Technologies Corp.* (1988) 487 U.S. 500, 508–509 [108 S.Ct. 2510, 101 L.Ed.2d 442].)

It has been stated that the defense is not limited to military contracts (see *Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 710 [99 Cal.Rptr.3d 418]), though no California court has expressly so held. (See *Kase v. Metalclad Insulation Corp.* (2016) 6 Cal.App.5th 623, 637 [212 Cal.Rptr.3d 198] [citing cases from courts outside of California that have observed that the defense may not be limited to military contracts].)

Depending on the facts of the case, choose one of the bracketed choices in element 4.

Different standards and elements apply in a failure-to-warn case. For an instruction for use in such a case, see CACI No. 1247, *Affirmative Defense—Failure to Warn—Government Contractor.*

Sources and Authority

- "The [United States] Supreme Court noted that in areas of ' "uniquely federal interests" ' state law may be preempted or displaced by federal law, and that civil liability arising from the performance of federal procurement contracts is such an area. The court further determined that

preemption or displacement of state law occurs in an area of uniquely federal interests only where a ' "significant conflict" ' exists between an identifiable federal policy or interest and the operation of state law. The court concluded that 'state law which holds Government contractors liable for design defects in military equipment does in some circumstances present a "significant conflict" with federal policy and must be displaced.' " (*Oxford, supra,* 177 Cal.App.4th at p. 708, quoting *Boyle, supra,* 487 U.S. at pp. 500, 504, 507, 512.)

- "Liability for design defects in military equipment cannot be imposed, pursuant to state law, when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States. The first two of these conditions assure that the suit is within the area where the policy of the 'discretionary function' would be frustrated—i.e., they assure that the design feature in question was considered by a Government officer, and not merely by the contractor itself. The third condition is necessary because, in its absence, the displacement of state tort law would create some incentive for the manufacturer to withhold knowledge of risks, since conveying that knowledge might disrupt the contract but withholding it would produce no liability. We adopt this provision lest our effort to protect discretionary functions perversely impede them by cutting off information highly relevant to the discretionary decision." (*Boyle, supra,* 487 U.S. at pp. 512–513.)

- "[T]he fact that a company supplies goods to the military does not, in and of itself, immunize it from liability for the injuries caused by those goods. Where the goods ordered by the military are those readily available, in substantially similar form, to commercial users, the military contractor defense does not apply." (*In re Hawaii Federal Asbestos Cases* (9th Cir. 1992) 960 F.2d 806, 811.)

- "[W]here a purchase does not involve 'reasonably precise specifications' bearing on the challenged design feature, the government necessarily has not made a considered evaluation of and affirmative judgment call about the design." (*Kase, supra, ~~v. Metalclad Insulation Corp. (2016)~~* 6 Cal.App.5th ~~623,~~ at p. 628 ~~[212 Cal.Rptr.3d 198]~~.)

- "In our view, if a product is produced according to military specifications and used by the military because of particular qualities which serve a military purpose, and is incidentally sold commercially as well, that product may nonetheless still qualify as military equipment under the military contractor defense." (*Jackson v. Deft, Inc.* (1990) 223 Cal.App.3d 1305, 1319 [273 Cal.Rptr. 214]; see also *Kase, supra,* 6 Cal.App.5th at p. 637 ["We continue to agree with *Jackson* and *Oxford* that a product's commercial availability does not necessarily foreclose the government contractor defense."].)

- "While courts such as the court in *Hawaii* have sought to confine the government contractor defense to products that are made exclusively for the military, we agree with the court in *Jackson* that this limitation is unduly confining. Though the court in *Boyle* discussed the parameters of the contractor defense in terms of 'military equipment,' use of that term appears to have followed from the facts of that case. Other courts considering this issue have concluded the defense is not limited to military contracts. … [*Boyle's*] application focuses instead on whether the issue or area is one involving 'uniquely federal interests' and, if so, whether the application of state law

presents a 'significant conflict' with federal policy." (*Oxford, supra,* 177 Cal.App.4th at p. 710; the split on this issue in the federal and other state courts is noted in *Carley v. Wheeled Coach* (3d Cir. 1993) 991 F.2d 1117, 1119, fn. 1.)

- "[T]he Supreme Court in *Boyle* did not expressly limit its holding to products liability causes of action. Thus, the government contractor defense is applicable to related negligence claims." (*Oxford, supra,* 177 Cal.App.4th at p. 711.)

- "[I]n order to satisfy the first condition—government 'approval' … the government's involvement must transcend rubber stamping." (*Oxford, supra,* 177 Cal.App.4th at p. 712.)

- "[A]pproval must result from a 'continuous exchange' and 'back and forth dialogue' between the contractor and the government. When the government engages in a thorough review of the allegedly defective design and takes an active role in testing and implementing that design, *Boyle's* first element is met." (*Getz v. Boeing Co.* (9th Cir. 2011) 654 F.3d 852, 861, internal citation omitted.)

- "[T]he operative test for conformity with reasonably precise specifications turns on whether 'the alleged defect … exist[ed] independently of the design itself.' 'To say that a product failed to conform to specifications is just another way of saying that it was defectively manufactured.' Therefore, absent some evidence of a latent manufacturing defect, a military contractor can establish conformity with reasonably precise specifications by showing '[e]xtensive government involvement in the design, review, development and testing of a product' and by demonstrating 'extensive acceptance and use of the product following production.' " (*Getz, supra,* 654 F.3d at p. 864, internal citations omitted.)

- "[T]he cases recognize that a contractor 'can demonstrate a fully informed government decision by showing either that they conveyed the relevant known and "substantial enough" dangers … *or* that the government did not need the warnings because it already possessed that information.' " (*Kase, supra,* 6 Cal.App.5th at p. 643, original italics, internal citations omitted.)

- "Although the source of the government contractor defense is the United States' sovereign immunity, we have explicitly stated that 'the government contractor defense does not confer sovereign immunity on contractors.' " (*Rodriguez v. Lockheed Martin Corp.* (9th Cir. 2010) 627 F.3d 1259, 1265.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1704

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1270, 2:1316, 2:1631 (The Rutter Group)

1 California Products Liability Actions, Ch. 8, *Defenses*, § 8.05 (Matthew Bender)

2 Levy et al., California Torts, Ch. 21, *Aviation Tort Law*, § 21.02[6] (Matthew Bender)

2 California Forms of Pleading and Practice, Ch. 16, *Airplanes and Airports*, § 16.10[5] (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, § 460.104[23] (Matthew Bender)

1247. Affirmative Defense—Failure to Warn—Government Contractor

[*Name of defendant*] may not be held liable for failure to warn about the dangers in the use of the [*product*] if it proves all of the following:

1. **That [*name of defendant*] contracted with the United States government to provide the [*product*] for military use;**

2. **That the United States imposed reasonably precise specifications ~~on [*name of defendant*]~~ regarding the provision of warnings for the [*product*];**

3. **That the [*product*] conformed to those specifications regarding warnings; and**

[4. That [*name of defendant*] warned the United States about the dangers in the use of the [*product*] that were known to [*name of defendant*] but not to the United States.]

[*or*]

[4. That the United States was aware of the dangers in the use of the [*product*].]

New December 2010; Revised November 2024

Directions for Use

This instruction is for use if the defendant's product about which a failure to warn is alleged (see CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*, and CACI No. 1222, *Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements*) was provided to the United States government for military use. The essence of the defense is that the plaintiff should not be able to impose on a government contractor a duty under state law that is contrary to the duty imposed by the government contract. (~~See~~ *Boyle v. United Technologies Corp.* (1988) 487 U.S. 500, 508–509 [108 S.Ct. 2510, 101 L.Ed.2d 442].)

It has been stated that the defense is not limited to military contracts (see *Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 710 [99 Cal.Rptr.3d 418]), though no California court has expressly so held. (See *Kase v. Metalclad Insulation Corp.* (2016) 6 Cal.App.5th 623, 637 [212 Cal.Rptr.3d 198] [citing cases from courts outside of California that have observed that the defense may not be limited to military contracts].)

Depending on the facts of the case, choose one of the bracketed choices in element 4.

Different standards and elements apply in a design defect case. For an instruction for use in such a case, see CACI No. 1246, *Affirmative Defense—Design Defect—Government Contractor*.

Sources and Authority

- "The appellate court in *Tate* [*Tate v. Boeing Helicopters* (6th Cir. 1995) 55 F.3d 1150, 1157] offered an alternative test for applying the government contractor defense in the context of failure to warn claims: 'When state law would otherwise impose liability for a failure to warn of dangers in using military equipment, that law is displaced if the contractor can show: (1) the United States exercised its discretion and approved the warnings, if any; (2) the contractor provided warnings that conformed to the approved warnings; and (3) the contractor warned the United States of the dangers in the equipment's use about which the contractor knew, but the United States did not.' " (*Oxford, supra,* 177 Cal.App.4th at p. 712.)

- "As in design defect cases, in order to satisfy the first condition—government 'approval'—in failure to warn cases, the government's involvement must transcend rubber stamping. And where the government goes beyond approval and actually determines for itself the warnings to be provided, the contractor has surely satisfied the first condition because the government exercised its discretion. The second condition in failure to warn cases, as in design defect cases, assures that the defense protects the government's, not the contractor's, exercise of discretion. Finally, the third condition encourages frank communication to the government of the equipment's dangers and increases the likelihood that the government will make a well-informed judgment." (*Oxford, supra,* 177 Cal.App.4th at p. 712, quoting *Tate, supra,* 55 F.3d at p. 1157.)

- "Under California law, a manufacturer has a duty to warn of a danger when the manufacturer has knowledge of the danger or has reason to know of it and has no reason to know that those who use the product will realize its dangerous condition. Whereas the government contractor's defense may be used to trump a design defect claim by proving that the government, not the contractor, is responsible for the defective design, that defense is inapplicable to a failure to warn claim in the absence of evidence that in making its decision whether to provide a warning … , [defendant] was 'acting in compliance with "reasonably precise specifications" imposed on [it] by the United States.' " (*Butler v. Ingalls Shipbuilding* (9th Cir. 1996) 89 F.3d 582, 586, internal citations omitted.)

- "In a failure-to-warn action, where no conflict exists between requirements imposed under a federal contract and a state law duty to warn, regardless of any conflict which may exist between the contract and state law design requirements, *Boyle* commands that we defer to the operation of state law." (*Butler, supra,* 89 F.3d at p. 586.)

- "Defendants' evidence did not establish as a matter of law the necessary significant conflict between federal contracting requirements and state law. Although defendants' evidence did show that certain warnings were required by the military specifications, that evidence did not establish that the specifications placed any limitation on additional information from the manufacturers to users of their products. Instead, the evidence suggested no such limitation existed." (*Jackson v. Deft, Inc.* (1990) 223 Cal.App.3d 1305, 1317 [273 Cal.Rptr. 214].)

- "The [United States] Supreme Court noted that in areas of ' "uniquely federal interests" ' state law may be preempted or displaced by federal law, and that civil liability arising from the performance of federal procurement contracts is such an area. The court further determined that preemption or displacement of state law occurs in an area of uniquely federal interests only where

a ‘ “significant conflict” ’ exists between an identifiable federal policy or interest and the operation of state law.” (*Oxford, supra,* 177 Cal.App.4th at p. 708, quoting *Boyle, supra,* 487 U.S. at pp. 500, 504, 507, 512.)

- “[T]he Supreme Court in *Boyle* did not expressly limit its holding to products liability causes of action. Thus, the government contractor defense is applicable to related negligence claims.” (*Oxford, supra,* 177 Cal.App.4th at p. 711.)

- “[T]he fact that a company supplies goods to the military does not, in and of itself, immunize it from liability for the injuries caused by those goods. Where the goods ordered by the military are those readily available, in substantially similar form, to commercial users, the military contractor defense does not apply.” (*In re Hawaii Federal Asbestos Cases* (9th Cir. 1992) 960 F.2d 806, 811.)

- “In our view, if a product is produced according to military specifications and used by the military because of particular qualities which serve a military purpose, and is incidentally sold commercially as well, that product may nonetheless still qualify as military equipment under the military contractor defense.” (*Jackson, supra,* 223 Cal.App.3d at p. 1319.)

- “While courts such as the court in *Hawaii* have sought to confine the government contractor defense to products that are made exclusively for the military, we agree with the court in *Jackson* that this limitation is unduly confining. Though the court in *Boyle* discussed the parameters of the contractor defense in terms of ‘military equipment,’ use of that term appears to have followed from the facts of that case. Other courts considering this issue have concluded the defense is not limited to military contracts. … [*Boyle’s*] application focuses instead on whether the issue or area is one involving ‘uniquely federal interests’ and, if so, whether the application of state law presents a ‘significant conflict’ with federal policy.” (*Oxford, supra,* 177 Cal.App.4th at p. 710~~; the split on this issue in the federal and other state courts is noted in *Carley v. Wheeled Coach* (3d Cir. 1993) 991 F.2d 1117, 1119, fn. 1~~.)

- “[T]he cases recognize that a contractor ‘can demonstrate a fully informed government decision by showing either that they conveyed the relevant known and “substantial enough” dangers … *or* that the government did not need the warnings because it already possessed that information.’ ” (*Kase, supra,* 6 Cal.App.5th at p. 643, original italics, internal citations omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1704

1 California Products Liability Actions, Ch. 8, *Defenses*, § 8.05 (Matthew Bender)

2 Levy et al., California Torts, Ch. 21, *Aviation Tort Law*, § 21.02[6] (Matthew Bender)

2 California Forms of Pleading and Practice, Ch. 16, *Airplanes and Airports*, § 16.10[5] (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, § 460.104[23] (Matthew Bender)

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; Revised November 2024**

Directions for Use

This instruction may be used if the plaintiff seeks to hold the hirer of an independent contractor vicariously liable for the independent contractor's torts because the work for which the contractor was hired involves a special risk arising out of the nature of the work or its location.

However, do not give this instruction if an independent contractor (or its employee) seeks to hold the hirer or general contractor vicariously liable for injuries arising from the work performed by the independent contractor for the hirer. (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 52 [282 Cal.Rptr.3d 658, 493 P.3d 212].) Give instead, if applicable, CACI No. 1009B, *Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control*.

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] [proper in this case for trial court to find peculiar risk as a matter of law].)

- "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].)

- "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*, *supra*, ~~*v. Mathis* (2021)~~ 12 Cal.5th ~~29,~~ at p. 52 ~~[282 Cal.Rptr.3d 658, 493 P.3d 212]~~, original italics.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1394–1396

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.05[3][b] (Matthew Bender)

2 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, 248.32[3] (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)

3713. Nondelegable Duty

[*Name of defendant***] has a duty that cannot be delegated to another person arising from [***insert name, popular name, or number of regulation, statute, or ordinance***/a contract between the parties/***other, e.g., the landlord-tenant relationship***]. Under this duty, [***insert requirements of regulation, statute, or ordinance or otherwise describe duty***].**

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by the conduct of [***name of ~~independent contractor~~third party***] and that [***name of defendant***] is responsible for this harm. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] hired [***name of ~~independent contractor~~third party***] to [***describe job involving nondelegable duty~~, e.g., repair the roof~~***];**

2. **That [***name of ~~independent contractor~~third party***] [***specify wrongful conduct in breach of duty, e.g., did not comply with this law***];**

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

4. **That [***name of ~~independent contractor~~third party***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New October 2004; Revised June 2010, November 2024

Directions for Use

Use this instruction with regard to the liability of the hirer for the torts of a ~~n independent contractor~~ third party if a nondelegable duty is imposed on the hirer by statute, regulation, ordinance, contract, or common law. (See *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 455 [283 Cal.Rptr. 463].)

Sources and Authority

- "As a general rule, a hirer of an independent contractor is not liable for physical harm caused to others by the act or omission of the independent contractor. There are multiple exceptions to the rule, however, one being the doctrine of nondelegable duties. … ' "A nondelegable duty is a definite affirmative duty the law imposes on one by reason of his or her relationship with others. One cannot escape this duty by entrusting it to an independent contractor." A nondelegable duty may arise when a statute or regulation requires specific safeguards or precautions to ensure others' safety. [Citation.] … ' " (*J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 400 [99 Cal.Rptr.3d 5], internal citations omitted.)

- "Nondelegable duties 'derive from statutes [,] contracts, and common law precedents.' They 'do not rest upon any personal negligence of the employer. They are rules of vicarious liability, making the employer liable for the negligence of the independent contractor, irrespective of whether the

employer has himself been at fault. They arise in situations in which, for reasons of policy, the employer is not permitted to shift the responsibility for the proper conduct of the work to the contractor. The liability imposed is closely analogous to that of a master for the negligence of his servant. [¶] The statement commonly made in such cases is that the employer is under a duty which he is not free to delegate to the contractor. Such a "non-delegable duty" requires the person upon whom it is imposed to answer for it that care is exercised by anyone, even though he be an independent contractor, to whom the performance of the duty is entrusted.' " (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 316 [111 Cal.Rptr.3d 787], internal citations omitted.)

- " 'When the manufacturer delegates some aspect of manufacture, such as final assembly or inspection, to a subsequent seller, the manufacturer may be subject to liability under rules of vicarious liability for a defect that was introduced into the product after it left the hands of the manufacturer.' This rule has the laudable effect of encouraging a manufacturer or distributor like [defendant] to act to safeguard proper assembly by its various dealers, including attempting to ensure that negligent conduct in one location does not repeat elsewhere. It further ensures that a plaintiff does not have the burden of discovering and proving *which* entity in the production chain is responsible for negligent assembly: [defendant] for insufficient instructions or safeguards that would ensure proper assembly, or a dealer for failing to execute [defendant's] commands properly." (*Defries v. Yamaha Motor Corp.* (2022) 84 Cal.App.5th 846, 861 [300 Cal.Rptr.3d 670], internal citation omitted.)

- "The rationale of the nondelegable duty rule is 'to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm[.]' The 'recognition of nondelegable duties tends to insure that there will be a financially responsible defendant available to compensate for the negligent harms caused by that defendant's activity[.]' Thus, the nondelegable duty rule advances the same purposes as other forms of vicarious liability." (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 727 [28 Cal.Rptr.2d 672], internal citations and footnote omitted.)

- "Simply stated, ' "[t]he duty which a possessor of land owes to others to put and maintain it in reasonably safe condition is nondelegable. If an independent contractor, no matter how carefully selected, is employed to perform it, the possessor is answerable for harm caused by the negligent failure of his contractor to put or maintain the buildings and structures in reasonably safe condition[.]" ' " (*Srithong, supra,* 23 Cal.App.4th at p. 726.)

- "Nondelegable duties may arise when a statute provides specific safeguards or precautions to insure the safety of others." (*Felmlee v. Falcon Cable Co.* (1995) 36 Cal.App.4th 1032, 1039 [43 Cal.Rptr.2d 158].)

- "Unlike strict liability, a nondelegable duty operates, not as a substitute for liability based on negligence, but to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm and who may therefore properly be held liable for the negligence of his agent, whether his agent was an employee or an independent contractor." (*Maloney v. Rath* (1968) 69 Cal. 2d 442, 446 [71 Cal.Rptr. 897, 445 P.2d 513].)

- " '[A] nondelegable duty operates, not as a substitute for liability based on negligence, but to assure that when a negligently caused harm occurs, the injured party will be compensated by the person

whose activity caused the harm and who may therefore properly be held liable for the negligence of his agent, whether his agent was an employee or independent contractor.' A California public agency is subject to the imposition of the duty in the same manner as any private individual." ~~A California public agency is subject to the imposition of a nondelegable duty in the same manner as any private individual.~~ (~~Gov. Code, § 815.4;~~ *Jordy v. County of Humboldt* (1992) 11 Cal.App.4th 735, 742 [14 Cal.Rptr.2d 553], citing Gov. Code, § 815.4, internal citations omitted.)

- "It is undisputable that '[t]he question of duty is ... a legal question to be determined by the court.' " (*Summers v. A.L. Gilbert Co*. (1999) 69 Cal.App.4th 1155, 1184 [82 Cal.Rptr.2d 162], internal citation omitted.)

- "When a court finds that a defendant has a nondelegable duty as a matter of law, the instruction given by the court should specifically inform the jurors of that fact and not leave them to speculate on the subject." (~~*Id.*~~ *Summers, supra,* 69 Cal.App.4th at p. 1187, fn. 5.)

- " 'Where the law imposes a definite, affirmative duty upon one by reason of his relationship with others, whether as an owner or proprietor of land or chattels or in some other capacity, such persons can not escape liability for a failure to perform the duty thus imposed by entrusting it to an independent contractor. ... It is immaterial whether the duty thus regarded as "nondelegable" be imposed by statute, charter or by common law.' " (*Snyder v. Southern California Edison Co*. (1955) 44 Cal.2d 793, 800 [285 P.2d 912], internal citation omitted.)

- "[T]o establish a defense to liability for damages caused by a brake failure, the owner and operator must establish not only that ' "~~'~~he did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law" ' "~~ but also that the failure was not owing to the negligence of any agent, whether employee or independent contractor, employed by him to inspect or repair the brakes." (*Clark v. Dziabas* (1968) 69 Cal.2d 449, 451 [71 Cal.Rptr. 901, 445 P.2d 517], internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1401 et seq.

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.05[3][d] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.10[2][d] (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.22[2][c] (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.42 (Matthew Bender)

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 plaintiff***] received documentation showing 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 seeking to evict [***name of defendant***] 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.**

[If the person who committed the abuse or violence is also a defendant in this case, I will decide if an eviction of only that person is appropriate after you, the jury, decide certain facts.]

New December 2011; Revised June 2013, June 2014, January 2019, May 2020, May 2024, November 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 the possibility of a partial eviction process under Code of Civil Procedure section 1174.27 removing only the perpetrator of the abuse or violence.

Whether the determinations underlying the partial eviction order are to be made by the court or the jury is unsettled. Code of Civil Procedure section 1174.27(c) provides that *the court* "shall determine whether there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member." The statute also provides that *the court* shall deny the affirmative defense if the court determines there is not documentation evidencing abuse or violence and *the court* shall issue a partial eviction if certain conditions are met, both of which would not be jury functions. If the court determines that there is documentation evidencing abuse or violence against the

tenant, the tenant's immediate family member, or the tenant's household member, and the court does not find the defendant raising the affirmative defense guilty of an unlawful detainer on any other grounds, and upon a showing that any other defendant was the perpetrator of the abuse or violence, then the court shall issue a partial eviction.

Include the final bracketed sentence only in cases involving more than one defendant, one of whom is the alleged perpetrator of the abuse or violence and resides in the same living unit. If the court is making determinations under section 1174.27, it may also be necessary to instruct that the proceeding involves a residential premises or to define "a residential premises" for the jury (Code Civ. Proc., § 1174.27(a)(1)) and to instruct that the defendant raising the defense has not been found guilty of an unlawful detainer on any other grounds. (Code Civ. Proc., § 1174.27(e).) Note that CACI No. VF-4328, *Affirmative Defense—Victim of Abuse or Violence*, includes questions that are not necessary if the victim is not seeking remedies under 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, 752

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. 330, *Landlord and Tenant: Eviction Actions*, § 330.28[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-4328. Affirmative Defense—Victim of Abuse or Violence

We answer the questions submitted to us as follows:

1. **Did [***name of plaintiff***] receive documentation or other evidence of abuse or violence against [[***name of defendant***]/ [or] [***name of defendant***]'s immediate family member/ [or] [***name of defendant***]'s household member]?**
   ____ 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***] file this lawsuit to evict [***name of defendant***] because of the act[s] of abuse or violence committed against [[him/her/***nonbinary pronoun***]/ [or] [***name of defendant***]'s immediate family member/ [or] [***name of defendant***]'s household member]?**
   ____ 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 the person who committed the act[s] of abuse or violence reside as a tenant in the same living unit as [[***name of defendant***]/ [or] [***name of defendant***]'s immediate family member/ [or] [***name of defendant***]'s household member]?**
   ____ Yes ____ No

   If your answer to question 3 is yes, then answer question 4. If you answered no, skip question 4 and answer question 5.

4. **Name the person who committed the abuse or violence against [***name of defendant***]/ [or] [***name of defendant***]'s immediate family member/ [or] [***name of defendant***]'s household member]:**

   _____

   Answer question 5.

[5. Did the person who committed the abuse or violence also threaten, by words or by actions, the physical safety of other tenants, guests, invitees, or licensees?
____ 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*] give a three-day notice to [*name of defendant*] 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?
____ 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. After the three-day notice given by [*name of plaintiff*] expired, did [*name of defendant*] voluntarily permit or consent to the presence on the property of the person who committed the abuse or violence?
____ Yes ____ No

Regardless of your answer to question 7, answer question 8 unless your answer to question 3 above is no. If you answered no to question 3 above, stop here, answer no further questions, and have the presiding juror sign and date this form.]

[8. Does the case involve a residential premises?
____ 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. Has [*name of defendant*] been found guilty of an unlawful detainer on any grounds other than the act[s] of abuse or violence committed against [him/her/*nonbinary pronoun*]?
____ Yes ____ No]

Signed: _____
Presiding Juror

Dated: _____

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

New November 2024

Directions for Use

This verdict form is based on CACI No. 4328, *Affirmative Defense—Victim of Abuse or Violence*, which is based on Code of Civil Procedure section 1161.3. This verdict form also includes questions relevant to a partial eviction remedy under Code of Civil Procedure section 1174.27.

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 the bracketed language in question 1 if the defendant is relying on other forms of "documentation or evidence that reasonably verifies that the abuse or violence occurred" under section 1161.3(a)(2)(D).

Questions 5 through 7 are optional; they should be included only if the exception to the affirmative defense under section 1161.3(b)(2)(B) is at issue. Omit questions 5 through 7 and renumber the questions that follow if it is undisputed that the perpetrator of abuse or violence is a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or the tenant's household member. If residency of the perpetrator and victim in the same dwelling is disputed, modify the directions after questions 5 through 7 to direct the jury to answer question 8 even if they have answered no to those questions.

Questions 8 and 9 are based on section 1174.27. (See Code Civ. Proc., § 1174.27(a)(1), (e).) Omit questions 8 and 9 if the case does not potentially involve a partial eviction procedure under section 1174.27 unless question 9 applies for an independent reason.

Question 9 may need to be expanded to ask any factual questions underlying the alternative unlawful detainer theory asserted against the defendant. This verdict form is designed to assist the court in determining whether the affirmative defense has been proved by the defendant raising the affirmative defense and whether there is a basis for issuing a partial eviction of the perpetrator-defendant. If the court does not find the defendant raising the affirmative defense guilty of an unlawful detainer on any other grounds but finds another defendant was the perpetrator of the abuse or violence on which the affirmative defense was based and is guilty of an unlawful detainer, then the court must follow the procedures under section 1174.27 for issuing a partial eviction of the perpetrator of abuse or violence.

Section 1174.27(c) provides that *the court* is to "determine whether there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member." Whether this determination is to be made by the court or the jury is unsettled. The statute also provides that the court shall deny the affirmative defense if the court determines there is not documentation evidencing abuse or violence and shall issue a partial eviction if certain conditions are met, both of which would not be jury functions.

ITC CACI 24-02
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Add and revise jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*).

Instruction(s)	Commenter	Comment	Committee Response
370. Common Count: Money Had and Received (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
371. Common Count: Goods and Services Rendered (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
373. Common Count: Account Stated (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
374. Common Count: Mistaken Receipt (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.

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Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Add and revise jury instructions and verdict forms)
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Instruction(s)	Commenter	Comment	Committee Response
	Civil Justice Association of California by Lucy Chinkezian Counsel Sacramento	**Restatements Generally** **CACI 374. Common Count: Mistaken Receipt; VF-304. Breach of Implied Covenant of Good Faith and Fair Dealing; and 4410. Unjust Enrichment** ***Sources and Authority*** The proposed changes to jury instruction 374, verdict form 304, and jury instruction 4410 would delete references to the Restatement First of Restitution, the Restatement of Restitution, and the Restatement Second of Contracts, respectively, from the Sources and Authorities section. The reference to the Restatement First of Restitution in Section 374 would appropriately be moved under the Secondary Sources section. This is an important update which CJAC supports. Restatements do not constitute binding legal authority as they are neither case law nor statute. As indicated in the Guide for Using Judicial Council of Civil Jury Instructions: "Each instruction sets forth the primary sources that present the basic legal principles that support the instruction. Applicable *statutes* are listed along with quoted material from *cases* that pertain to the subject matter of the instruction. . ." [emphasis added]. However, as recognized by the American Law Institute, Restatements "do not displace controlling statutes and precedents. . . They serve as useful secondary sources to	The committee acknowledges Civil Justice Association of California's (CJAC) support for relocating references to Restatements of the Law to Secondary Sources.

Instruction(s)	Commenter	Comment	Committee Response
		aid interpretation. . .”[1]. [FN 1. See https://www.ali.org/about-ali/faq/.]	
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
VF-304. Breach of Implied Covenant of Good Faith and Fair Dealing (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Civil Justice Association of California by Lucy Chinkezian Counsel Sacramento	See CJAC’s comment for CACI No. 374 regarding Restatements.	See the committee’s response to CJAC’s comments on CACI No. 374 above.
		Contracts **CACI VF-304. Breach of Implied Covenant of Good Faith and Fair Dealing** For Question 7, the use of the word “faith” to convey that defendant failed to act fairly is very vague and can cause confusion. The burden is on the plaintiff to show that there was some conduct that defendant engaged in that prevented plaintiff from receiving benefits under the contract, which may not be obvious from the proposed change to the instructions. Therefore, we recommend updating it as follows: Did [*name of defendant*] ~~fail to act fairly and in good faith~~ act unfairly and not in good faith?	The committee prefers the phrasing “fairly and in good faith,” which is consistent with CACI No. 325. The committee also does not believe that revising question 7 to the negative (i.e., unfairly and not in good faith) is advisable. The committee, however, recommends adding an introductory phrase to question 7 that refers to the conduct specified in question 6.

Instruction(s)	Commenter	Comment	Committee Response
		This change would align with the language of CACI 325, which provides defendant "did not act fairly and in good faith."	
		As for Question 8, the use of the word "failure" in this context creates bias against defendant. We recommend the following: Was [*name of plaintiff*] harmed by [name of defendant]'s ~~failure to act fairly and in good faith~~ conduct?	The committee agrees to the extent that the question should be rephrased to align with the phrasing of CACI No. 325's corresponding element and recommends replacing "interference" with "conduct." The committee notes, however, that its recommendation is not based on perceived bias in the phrase "failure to…" or "failed to…", both of which are used throughout CACI.
	Bruce Greenlee Attorney (ret.) Richmond	1. You don't cite any authority supporting the new language.	The proposed changes bring the verdict form into conformity with CACI No. 325, the instruction on which the verdict form is based. The Sources and Authority of that instruction support the changes.
		2. New question 6 is good.	No response required.
		3. But I find the proposed new language for what is now question 7 weaker and not terribly helpful. The prior language focusing on "interference" gives the jury more help on what to look for.	The committee disagrees. Question 7 aligns with the corresponding element in CACI No. 325. For additional

Instruction(s)	Commenter	Comment	Committee Response
			clarity, the committee also recommends adding an introductory phrase to question 7 that refers to the conduct specified in question 6.
	Orange County Bar Association by Christina Zabat-Fran President	Agree as modified. Recommended change in paragraph (8) from "failure to act fairly and in good faith" to "conduct" to align with CACI 325, as it is the conduct that harmed the plaintiff specifically.	The committee agrees and recommends the change to "harmed by [*name of defendant*]'s conduct" to align with CACI No. 325.
1009A. Liability to Employees of Independent Contractors for Unsafe Concealed Conditions (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with adding a reference to a reasonable inspection but find element 3 as revised too cumbersome. We suggest breaking it up into two elements for greater clarity: "3. That [*name of plaintiff's employer*] did not know of the unsafe concealed condition; "4. That if [*name of plaintiff's employer*] had performed a reasonable inspection of the worksite, [*name of plaintiff's employer*] would not have learned of the unsafe concealed condition."	The committee does not endorse the suggested solution of breaking element 3 up into two separate elements.
		b. We agree with the revisions to the Directions for Use and Sources and Authority.	No response required.
	Civil Justice Association of California by Lucy Chinkezian Counsel	**Premises Liability** **1009A. Liability to Employees of Independent Contractors for p. 19 Unsafe Concealed Conditions**	The committee disagrees. Eliminating the limited scope of the duty to inspect would

Instruction(s)	Commenter	Comment	Committee Response
	Sacramento	For Question 3, we recommend ending the sentence with "reasonable inspection," omitting the words "of the worksite" as follows: That [*name of plaintiff's employer*] neither knew nor could be reasonably expected to know of the unsafe concealed condition through a reasonable inspection ~~of the worksite~~. Use of the word "worksite" makes the line of questioning open to challenging where the inspection was.	not be consistent with authority.
		The *Acosta* case, cited to in the Directions for Use section, sufficiently addresses this issue. It refers to a "reasonable inspection" and notes that duty to inspect includes "the means to access the worksite."	The committee does not agree that the discussion in the Directions for Use, which do not reach the jury, is enough to eliminate the worksite from element 3 of the instruction text.
		As for Question 4, it is unclear why it is being omitted in the line of questions. An explanation would offer clarity.	The committee concluded that element 4 is not supported by the Second District Court of Appeal's analysis in *Acosta*, and at least in part is subsumed by element 3 as revised. If element 4 were not omitted, it could be interpreted to mean that the independent contractor would be responsible regardless of whether the hazard would be

Instruction(s)	Commenter	Comment	Committee Response
			detected through a reasonable inspection, which is contrary to the analysis in *Acosta v. MAS Realty* (2023) 96 Cal.App.5th 635, 652–655.
	Bruce Greenlee Attorney (ret.) Richmond	1. For revised element 3, I would move the new language on reasonable inspection to follow [*name of plaintiff's employer*] like this: "That [*name of plaintiff's employer*], having conducted a reasonable inspection of the worksite, neither knew nor could be reasonably expected to know of the unsafe concealed condition.	The committee does not recommend moving the inspection of the worksite content into a clause as suggested.
		2. I would not delete element 4. The first sentence of the excerpt from *Acosta* that you added to the S&A says that "An independent contractor does not have a duty to inspect all of the landowner's property or to identify hazards wholly outside his area of expertise." And goes on to mention "the work they have been hired to do." If the condition was completely separate from the contractor's work, physically and otherwise, then the contractor should not be expected to find it. But maybe make element 4 optional, to be included if the facts indicate that the jury could find that the condition was remote from the work.	The committee believes that eliminating element 4 is consistent with *Acosta* and prior cases. The Second District Court of Appeal in *Acosta* summarized, "As these and our other *Privette* cases make clear, a hirer presumptively delegates to an independent contractor all responsibility for workplace safety, such that the hirer is not responsible for any injury resulting from a known unsafe condition at the worksite—regardless of whether the contractor was specifically tasked with repairing the unsafe condition

Instruction(s)	Commenter	Comment	Committee Response
			and regardless of whether the danger was created by the work for which the contractor was retained." (*Acosta, supra,* 96 Cal.App.5th at 655.)
		Deletion of cross reference to Vicarious Responsibility series (3700 et seq.) I assume this is being deleted because there is no specific instruction for the liability of a hirer based on the acts of an independent contractor. Instead of deleting, maybe just change the language a bit: "See also the Vicarious Responsibility series, CACI No. 3700 et seq. for instructions on liability based on principles of agency."	The committee disagrees. Based on observations from the Second District Court of Appeal in *Acosta, supra,* 96 Cal.App.5th at p. 665 fn.7, the committee concluded that the cross reference to the Vicarious Liability Series had more potential for confusing users than it was helpful.
	Horvitz & Levy LLP by Stephen E. Norris and Steven S. Fleischman Burbank	As practicing attorneys who defend property owners and others in premises liability actions arising from work-related injuries sustained by contractors or contractors' employees, we write in support of the July 2024 revisions to CACI No. 1009A (concealed dangerous conditions) and CACI No. 3708 (peculiar risk) proposed by the Judicial Council and the Advisory Committee on Civil Jury Instructions (the Committee). We also write to recommend further revisions to CACI No. 3713 (nondelegable duties).	See the committee's responses to Horvitz & Levy LLP's specific comments below.
		A. Proposed revisions to CACI No. 1009A. We fully support the Committee's proposed revisions to CACI No. 1009A based on the Court of Appeal's holding in *Acosta v. MAS Realty* (2023) 96 Cal.App.5th 635 (*Acosta*). There, the Court of Appeal noted that the	The committee acknowledges Horvitz & Levy LLP's support for the proposed changes.

Instruction(s)	Commenter	Comment	Committee Response
		Committee should consider whether CACI No. 1009A should include "a description of the independent contractor's duty to inspect for safety issues," as described in several *Privette* cases involving a contractor or contractor's employee has asserted a premises liability claim against a property owner based on an alleged concealed dangerous condition on the property. (See *Acosta*, at p. 665, fn. 7, citing *Gonzalez v. Mathis* (2021) 12 Cal.5th 29 (*Gonzalez*); *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659 (*Kinsman*); *Blaylock v. DMP 250 Newport Center, LLC* (2023) 92 Cal.App.5th 863 (*Blaylock*); and *Johnson v. The Raytheon Co., Inc.* (2019) 33 Cal.App.5th 617 (*Johnson*).) The proposed revision properly modifies CACI No. 1009A to reflect the duty imposed on independent contractors under *Acosta* to inspect worksite premises for safety issues.	
	Orange County Bar Association by Christina Zabat-Fran President	Agree as modified.	See the committee's responses to OCBA's specific comments below.
		Suggested modification #1. Element 3 currently reads: That [*name of plaintiff's employer*] neither knew nor could be reasonably expected to know of the unsafe concealed condition through a reasonable inspection of the worksite; A modification is suggested because an employee could also be injured while accessing the worksite. The Directions for Use states that the court may wish to modify Element 3 "accordingly" in this situation, but Element 3 currently does not provide a template to do so.	The committee has included language like what OCBA has suggested in the Directions for Use, rather than in element 3. The committee does not recommend including additional bracketed language in element 3 because it would make the element more cumbersome than necessary and because the means of

Instruction(s)	Commenter	Comment	Committee Response
		Suggested modification: That [*name of plaintiff's employer*] neither knew nor could be reasonably expected to know of the unsafe concealed condition through a reasonable inspection of the worksite [or] [*describe means of access to the worksite*];	access to the worksite may not be at issue in many cases.
		Suggested modification #2. The Directions for Use includes the following language: The duty to inspect the worksite includes the means to access the worksite. (*Acosta, supra,* 96 Cal.App.5th at p. 662.) A modification is suggested because the sentence is ambiguous. The suggested modification below adds the phrase "a duty to inspect", taken verbatim from the cited authority: The duty to inspect the worksite includes a duty to inspect the means to access the worksite. (*Acosta, supra,* 96 Cal.App.5th at p. 662.)	The committee recommends the suggested modification for improved clarity.
1009B. Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
1009D. Liability to Employees of Independent Contractors	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee	Agree.	No response required.

Instruction(s)	Commenter	Comment	Committee Response
for Unsafe Conditions—Defective Equipment (Revise)	Sacramento		
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
1126. Failure to Warn of a Dangerous Condition Resulting From an Approved Design—Essential Factual Elements (New)	California Department of Transportation by Erin E. Holbrook, Chief Counsel	This public comment is submitted on behalf of the State of California, Department of Transportation (Caltrans) by the Caltrans Legal Division and in response to proposed Judicial Council of California Civil Jury Instruction (CACI) 1126 "Failure to Warn of a Dangerous Roadway Condition Resulting From an Approved Design-Essential Factual Elements."	See the committee's responses to Caltrans's specific comments below.
		A public entity such as Caltrans may be held liable under Government Code section 835 for either creating a dangerous condition on its property or failing to protect against such a condition when the entity had notice of the danger and sufficient time to remedy the situation. (Gov. Code,§ 835; *Tansavatdi v. City of Rancho Palos Verdes (Tansavatdi)* (2023) 14 Cal.5th 639, 647.) However, a public entity may assert the statutory defense of design immunity for injuries caused by an alleged defect in the design of a public improvement when the design was discretionarily approved by authorized personnel and when substantial evidence supported the reasonableness of the plan. (Gov. Code, § 830.6; *Tansavatdi,* 14 Cal.5th 639 at 647.)	No response required.
		In *Tansavatdi,* the Supreme Court identified the question presented as "whether design immunity is limited to claims alleging that a public entity created a dangerous	No response required.

Instruction(s)	Commenter	Comment	Committee Response
		roadway condition through a defective design, or whether the statutory immunity also extends to claims alleging that a public entity failed to warn of a design element that resulted in a dangerous roadway condition." *(Tansavatdi, supra,* 14 Cal.5th 639 at 647.) The Court concluded "design immunity does not categorically preclude failure to warn claims that involve a discretionarily approved element of a roadway." *(Ibid.)*	
		Proposed CACI 1126, addressing *Tansavatdi*'s holding, should be clarified in two ways. First, the proposed instruction as written may lead to confusion because it omits essential elements of a claim for dangerous condition of public property. Specifically, it omits these essential elements in CACI 1100: l. That [*name of defendant]* owned [or controlled] the property; 2. That the property was in a dangerous condition at the time of the injury; 3. That the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred (CACI 1100; see Gov. Code, § 835.)	The committee does not agree that the elements of a claim for dangerous condition on public property are directly applicable to a failure to warn claim. The court in *Tansavatdi* identified the unique elements of a failure to warn claim in this context, which requires a plaintiff to prove various elements that are not present when pursuing a claim alleging a public entity created that dangerous condition. The committee does not read *Tansavatdi* to hold that a plaintiff must also prove the essential elements of a dangerous condition claim to establish a failure to warn.
		The proposed instruction also omits the essential requirement that the defendant "had notice of the	The committee is not persuaded that a claim for

Instruction(s)	Commenter	Comment	Committee Response
		dangerous condition for a long enough time to have protected against it," which is also included in CACI 1100 and required by Government Code section 835. Caltrans respectfully suggests that the proposed instruction be reworded to state: [*Name of plaintiff*] claims that [*name of defendant*] is responsible for [his/her/*nonbinary pronoun*] harm caused [*name of defendant*]'s failure to warn of [*insert description of dangerous condition resulting from an approved design*]. To establish this claim, [*name of plaintiff*] must prove all of the following: 1. That [*name of defendant*] owned [or controlled] the property; 2.That the property was in a dangerous condition at the time of the injury; 3. That the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred; 4. That [*name of defendant*] had notice that its approved design created a dangerous condition for a long enough time to have protected against it; 5. That [*name of defendant*] failed to warn of the dangerous condition; 6. That the dangerous condition would not have been reasonably apparent to or anticipated by a person exercising due care; 7. That [*name of plaintiff*] was harmed; and 8. That the absence of a warning was a substantial factor in causing [*name of plaintiff*]'s harm.	failure to warn requires actual notice of the dangerous condition for long enough to protect against it. Rather, the court in *Tansavatdi* stated the requirement as "the public entity had actual or constructive notice that the approved design resulted in a dangerous condition." (*Tansavatdi, supra,* 14 Cal.5th at p. 662.) The committee reached this conclusion because constructive knowledge is inconsistent with the requirement proposed by Caltrans.
		Second, the proposed instruction should not be used where the public entity presents evidence that the presence or	The committee agrees that the court in *Tansavatdi*, as well

Instruction(s)	Commenter	Comment	Committee Response
		absence of warning signs was part of the approved design. In *Tansavatdi* the Court left open whether design immunity protects a public entity under such circumstances. Finally, we note that while *Cameron* concluded a public entity can be held liable for failing to warn of a dangerous roadway feature that was the result of a properly approved design, **our decision did not address whether design immunity might apply if the public entity is able to show that the presence or absence of warning signs was part of the approved design**. The plaintiffs in *Cameron* specifically alleged that the state's failure to warn was not part of any approved plan, and they acknowledged in their petition for review that section 830.6 might apply 'where the presence or absence of signs was a considered element of the plan or design.' In this case, the City's summary judgment motion argued only that section 830.6 shields public entities from failure to warn claims involving an approved feature of the roadway; the City did not argue that the evidence offered in support of its design immunity defense showed city officials had considered whether to provide a warning about the discontinuance of the bike lane. **Thus, as in *Cameron,* we have no occasion to consider, and express no view on, how design immunity might affect a failure to warn claim when a public entity does produce evidence that it considered whether to provide a warning.**	as the court in *Cameron*, left this question open. See the committee's response below to the suggested additional material.

Instruction(s)	Commenter	Comment	Committee Response
		(*Tansavatdi*, 14 Cal.5th 639, 661 [emphasis added, citations omitted].) In *Stufkosky* v. *California Dept. of Transp.*, (2023) 97 Cal.App.5th 492, the Second District Court of Appeal addressed the question reserved in *Tansavatdi* and held design immunity precludes a claim based on a failure to warn of a known dangerous condition where the public entity presents evidence warning signs were present and part of the approved design. > The Supreme Court, however, declined to decide the issue presented here: whether design immunity "affect[s] a failure to warn claim when a public entity does produce evidence that it considered whether to provide a warning." Caltrans produced evidence that its design plans specified the quantity and placement of deer crossing signs. Appellants did not dispute Caltrans warned motorists of this danger, only that it *did not do so adequately.* The trial court resolved the issue in Caltrans' favor after the parties submitted supplemental briefing and evidence. As discussed above, we conclude substantial evidence supports the finding. *(Stufkosky*, 97 Cal.App.5th 492, 501 [citations omitted, italics in original].) In contrast to *Tansavatdi* and *Stufkosky,* the proposed instruction could incorrectly make a public entity liable even where the presence or absence of a warning sign was a considered element of the design. This is so because the proposed instruction could incorrectly create liability where the public entity "failed to warn of a dangerous condition" (par. 2) whether or not the absence of warning	

Instruction(s)	Commenter	Comment	Committee Response
		signs was considered. To remedy this, Caltrans respectfully suggests that additional material (set forth below in bold) be added under the Directions for Use and Sources and Authority:	
		Direction for Use: Give this instruction if the plaintiff claims that the public entity defendant failed to warn of a dangerous roadway condition resulting from an approved design, even if the approved design would otherwise be covered by design immunity. **This instruction should not be given where there the public entity produces evidence that the presence or absence of a warning sign was a considered element of the public entity's approved design.**	The committee agrees to the extent that the issue of whether or how design immunity might affect a failure to warn claim when a public entity does produce evidence that it considered whether to provide a warning was not addressed in the Directions for Use in the proposal circulated for comment. The committee does not agree that there is support for categorically stating that "the instruction should not be given where there the public entity produces evidence that the presence or absence of a warning sign was a considered element of the public entity's approved design." Instead, the committee recommends stating in the Directions for Use that the issue has not been resolved.

Instruction(s)	Commenter	Comment	Committee Response
		Sources and Authority: **"Finally, we note that while *Cameron* concluded a public entity can be held liable for failing to warn of a dangerous roadway feature that was the result of a properly approved design, our decision did not address whether design immunity might apply if the public entity is able to show that the presence or absence of warning signs was part of the approved design.... Thus, as in Cameron, we have no occasion to consider, and express no view on, how design immunity might affect a failure to warn claim when a public entity does produce evidence that it considered whether to provide a warning." *(Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 661.)**	The committee recommends adding another excerpt from *Tansavatdi* as suggested.
		"The Supreme Court, however, declined to decide the issue presented here: whether design immunity "affect[s] a failure to warn claim when a public entity *does* produce evidence that it considered whether to provide a warning." Caltrans produced evidence that its design plans specified the quantity and placement of deer crossing signs. Appellants did not dispute Caltrans warned motorists of this danger, only that it *did not do so adequately.* The trial court resolved the issue in Caltrans' favor after the parties submitted supplemental briefing and evidence. As discussed above, we conclude substantial evidence supports the finding." (*Stufkosky v. California Department of Transportation* (2023) 97 Cal.App.5th 492, 501 [citations omitted, italics in original].)	The committee believes that the excerpt from *Stufkosky* suggested is too fact specific for the Sources and Authority. The committee, however, recommends citing *Stufkosky* in the Directions for Use on the issue of design immunity. The committee does not read the court of appeal decision in *Stufkosky* to resolve the issue either.

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Instruction(s)	Commenter	Comment	Committee Response
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed new instruction.	No response required.
		b. We suggest adding this recent case to the Sources and Authority: "Caltrans produced evidence that its design plans specified the quantity and placement of deer crossing signs. Appellants did not dispute Caltrans warned motorists of this danger, only that it *did not do so adequately*. The trial court resolved the issue in Caltrans' favor . . . . As discussed above, we conclude substantial evidence supports the finding." (*Stufkosky v. Department of Transportation* (2023) 97 Cal.App.5th 492, 501.)	See the committee's response to Caltrans above on the issue of adding an excerpt from *Stufkosky*.
	Bruce Greenlee Attorney (ret.) Richmond	1. Since this new instruction is an end run around design immunity, which is CACI No. 1123, and CACI No. 1124 is another end run around design immunity, I'd consider numbering this instruction 1125 and renumbering current 1125 as 1126, or maybe even 1130.	The committee appreciates the suggestion on numbering the instructions but does not believe that the benefit of grouping certain instructions together outweighs the potential for confusion arising from renumbering an existing instruction in this series (specifically with respect to legal research on the renumbered instruction).
		2. The first element should be that the design was approved in conformity with the requirements of design immunity.	The committee does not believe there is support for this element.
		3. Then current element 1 would become element 2; I would begin it with "However,".	See response above.

Instruction(s)	Commenter	Comment	Committee Response
		4. The [Directions for Use] should cross refer to 1123 at the end of the first paragraph.	The committee recommends including a cross reference to CACI No. 1123 in the Directions for Use of this new instruction, as suggested.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
	Christopher J. Welsh Senior Deputy County Counsel San Diego County Office of County Counsel	The phrase "approved design" is not appropriate. It appears twice in this instruction. Also, IF the design itself involved engineering judgment as to which warnings to include or not include in the design, the failure to warn theory is not available – because the warning is part of the protected design.	The committee disagrees. First, with respect to phrasing, the Supreme Court in *Tansavatdi* used "approved design." With respect to the potential for design immunity, the Supreme Court expressly did not resolve the issue as discussed above in the comments from Caltrans and the committee's responses.
		The instruction is meant to address a "failure to warn" after design immunity has been established. To establish design immunity under Govt. Cd. 830.6 the public entity can show either the plans were approved, or the plans were in conformity with standards previously approved. Many roadway cases, for example, will involve the CAMUTCD or the ASSHTO "Green Book", which set forth standards that have been approved and adopted by	The committee thanks the commenter for the information.

Instruction(s)	Commenter	Comment	Committee Response
		many public entities. So "approved design" is not correct. The key language in 830.6 is: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor.	
		The instruction should be: [Name of plaintiff] claims that IF [name of defendant] HAS ESTABLISHED DESIGN IMMUNITY IT is STILL responsible for [his/her/nonbinary pronoun] harm caused by [name of defendant]'s failure to warn of [insert description of dangerous condition resulting from THE DESIGN], UNLESS THE DESIGN INCLUDED CONSIDERATION OF SOME FORM OF WARNING. To establish this claim, [name of plaintiff] must prove all of the following: 1. That [name of defendant] had notice that its DESIGN RESULTED IN a dangerous condition; 2. THAT THE DESIGN DID NOT INCLUDE CONSIDERATION OF ANY TYPE OF WARNING; 3. That [name of defendant] failed to warn of the dangerous condition;	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		4. That the dangerous condition would not have been reasonably apparent to or anticipated by a person exercising due care; 5. That [name of plaintiff] was harmed; and 6. That the absence of a warning was a substantial factor in causing [name of plaintiff]'s harm.	
1246. Affirmative Defense—Design Defect—Government Contractor (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We would revise the proposed new optional language in element 4 to state more clearly that the United States was aware of the dangers without stating that the United States did not need to be warned. We believe "the United States did not need to be warned because" is more explanation than the jury needs, and stating that there was no need to warn may raise questions in the jury's mind if there is no prior reference to warning because the first alternative language in element 4 is not given. We also believe "already" is unnecessary and not helpful. We propose: "[That the United States ~~did not need to be warned because it~~ was ~~already~~ aware of the dangers in the use of the [*product*].]	The committee agrees and recommends the suggested change to optional element 4.
		b. We agree with the revisions to the Directions for Use.	No response required.
	Civil Justice Association of California by Lucy Chinkezian Counsel Sacramento	**Products Liability** **CACI 1246. Affirmative Defense—Design Defect—Government Contractor; and CACI 1247. Affirmative Defense—Failure to Warn—Government Contractor** The proposed changes to jury instructions 1246 and 1247 would add that a defendant may not be liable for design defects or its failure to warn if it proves, among other	The committee does not see improved clarity or legal accuracy in the phrasing suggested. The committee, however, has refined the alternative element 4 as suggested by California Lawyers Association.

Instruction(s)	Commenter	Comment	Committee Response
		elements, "[t]hat the United States did not need to be warned because it was already aware of the dangers in the use of the [product]." However, *Kase v. Metalclad Insulation Corp.* (2016) 6 Cal.App.5th 623, 643, provides that a contractor "can demonstrate a fully informed government decision by showing. . . that the government did not need the warnings because it already possessed that information [i.e., the relevant known and "substantial enough" dangers]." We recommend aligning the instruction with Kase by amending element 4 as follows: That the United States did not need to be warned because it ~~was already aware of~~ possessed information regarding the dangers in the use of the [*product*].	
	Bruce Greenlee Attorney (ret.) Richmond	The "or" between the options for element 4 should be italicized since you are not suggesting including both options, meaning that the word "or" will not be included in the assembled instruction.	The committee has made the formatting change suggested.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
	Judge Mary E. Wiss Superior Court of California, County of San Francisco	The following proposed language in the Use Notes to 1246 and 1247 seems slightly awkward" "[citing cases from courts outside of California that have observed that the defense may apply in a non-military context]." (See *Kase v. Metalclad Insulation Corp.* (2016) 6 Cal.App.5th	The committee recommends adopting the language suggested by the commenter for the parenthetical in the Direction for Use that states

Instruction(s)	Commenter	Comment	Committee Response
		623, 637 [212 Cal.Rptr.3d 198] [citing cases from courts outside of California that have observed the defense may not be limited to military contracts]. Suggested change: [citing cases from courts outside of California that have observed that the defense may apply in a non-military context]. Below is the quote from *Kase:* *Kase v. Metalclad Insulation Corp.* (2016) 6 Cal.App.5th 623, 637, as modified (Dec. 21, 2016): The court also cited to *Jackson* and agreed *Hawaii*'s limitation of the defense "to products that are made exclusively for the military" is "unduly confining." (*Oxford*, at p. 710, 99 Cal.Rptr.3d 418.) In fact, observed the Oxford court, other courts had held the defense is not even limited to military contracts. (Ibid., citing *Carley v. Wheeled Coach* (3d Cir. 1993) 991 F.2d 1117, 1119, fn. 1 [defense applied to contract for ambulance procured by *General Services Administration for Virgin Islands Department of Health*]; see *In re Katrina Canal Breaches Litigation* (5th Cir. 2010) 620 F.3d 455, 459–465 [considering defense in connection with levee construction contracts with U.S. Army Corps of Engineers; summary judgment reversed because of insufficiently detailed backfill and compaction specifications]; *Bennett v. MIS Corp.* (6th Cir. 2010) 607 F.3d 1076, 1089–1090 [joins other circuit courts holding defense can apply in "the non-military context"].)	that the defense may not be limited to military contracts.

ITC CACI 24-02
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Add and revise jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*).

Instruction(s)	Commenter	Comment	Committee Response
1247. Affirmative Defense—Failure to Warn—Government Contractor (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. Same comment as a above [for CACI No. 1246].	See the committee's response to California Lawyers Association's comment on CACI No. 1246 above.
		b. We would retain the reference to *Carley v. Wheeled Coach* (3d Cir. 1993) 991 F.2d 1171 in the Directions for Use, as in the Directions for Use for CACI No. 1246.	The committee does not endorse retaining the citation to the Third Circuit case. Users can learn about the federal case if they read the *Oxford* case excerpted, which includes a pincite to the footnote in *Carley* that is recommeded to be removed from the entry in the Sources and Authority.
	Bruce Greenlee Attorney (ret.) Richmond	1. Same point on "or." [The "or" between the options for element 4 should be italicized since you are not suggesting including both options, meaning that the word "or" will not be included in the assembled instruction.]	The committee has made the suggested formatting change.
		2. Also, new alternative element 4 is indented one stop too far right. Number needs to line up under other 4.	The committee appreciates the issue identified. The appearance of the indentation is caused by the use of track changes; the indentation of the element will appear properly in the final instruction when published.

Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
	Judge Mary E. Wiss Superior Court of California, County of San Francisco	See the comment for CACI No. 1246.	As with CACI No. 1246, the committee recommends adopting the language suggested by the commenter for the parenthetical in the Direction for Use.
1803. Appropriation of Name or Likeness—Essential Factual Elements (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. The essence of the common law claim is misappropriation of name or likeness. We believe the introductory paragraph in the instruction should describe the claim in terms of "misappropriation" of a specific aspect of the plaintiff's identity rather than "violation" of the right of privacy or publicity. The jury need not understand the right of privacy/publicity framework to understand this claim and need not be burdened with those terms. We would revise the introductory paragraph as follows: "[*Name of plaintiff*] claims that [*name of defendant*] ~~violated~~ misappropriated [his/her/*nonbinary pronoun*] ~~right to [privacy/publicity/privacy and publicity]~~ [name/voice/signature/ photograph/likeness/identity]. To establish this claim, [*name of plaintiff*] must prove all of the following:	The committee thanks California Lawyers Association for these comments. They are beyond the scope of the invitation to comment and will be considered during the next release cycle. Because the proposed revisions to CACI No. 1803 are more clarifying than substantive, the committee recommends deferring the proposed changes to also consider California Lawyers Association's suggestions.
		b. Element 1 should specify the specific aspect of the plaintiff's identity at issue for greater clarity, as in CACI Nos. 1804A and 1804B. We propose:	This comment is beyond the scope of the invitation to comment. The committee will

Instruction(s)	Commenter	Comment	Committee Response
		"1. That [*name of defendant*] used [*name of plaintiff*]'s ~~name, likeness, or identity~~ [name/voice/signature/photograph/likeness/identity];"	consider it in its next release cycle.
		c. Element 3 should specify the specific aspect of the plaintiff's identity at issue for greater clarity, as in CACI Nos. 1804A and 1804B. We propose: "3. That [*name of defendant*] gained a commercial benefit [or some other advantage] by using [*name of plaintiff*]'s ~~name, likeness, or identity~~ [name/voice/signature/photograph/likeness/ identity];"	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
		d. The Directions for Use should begin by stating that this instruction is for use when the plaintiff alleges a common law claim, while CACI Nos. 1804A and 1804B are for use with statutory claims.	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
		e. Consistent with the above, we would revise the current first paragraph in the Directions for Use to refer to misappropriation claims rather than right of privacy/publicity claims: "If the plaintiff is asserting misappropriation of more than one aspect of the plaintiff's identity ~~more than one privacy or a right of publicity~~, give an introductory instruction so stating ~~stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing~~."	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.

Instruction(s)	Commenter	Comment	Committee Response
		f. We would add language to the Directions for Use stating to select the aspect of the plaintiff's identity that is at issue where those terms appear in brackets.	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
	Bruce Greenlee Attorney (ret.) Richmond	In the DforU, the right of publicity should be defined or explained and contrasted with the right of privacy so the user knows the difference. You can get a definition of the right of publicity from *Comedy III*.	The committee recommends deferring the proposed changes to consider California Lawyers Association's suggestions.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required. The committee is recommending consideration of other possible changes.
1804A. Use of Name or Likeness (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. The essence of the statutory law claim is misappropriation of name or likeness. We believe the introductory paragraph in the instruction should describe the claim in terms of "misappropriation" of a specific aspect of the plaintiff's identity rather than "violation" of the right of privacy or publicity. The jury need not understand the right of privacy/publicity framework to understand this claim and need not be burdened with those terms. We would revise the introductory paragraph as follows: "[*Name of plaintiff*] claims that [*name of defendant*] ~~violated~~ misappropriated [his/her/*nonbinary pronoun*] ~~right to [privacy/publicity/privacy and publicity]~~ [name/voice/signature/ photograph/likeness]. To establish	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle. Because the proposed revisions to CACI No. 1804A are more clarifying than substantive, the committee recommends deferring the proposed changes to also consider California Lawyers Association's suggestions.

Instruction(s)	Commenter	Comment	Committee Response
		this claim, [*name of plaintiff*] must prove all of the following:	
		b. The Directions for Use should begin by stating that this instruction is for use when the plaintiff alleges a common law claim, while CACI No. 1803 is for use with statutory claims.	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
		c. Consistent with the above, we would revise the current first paragraph in the Directions for Use to refer to misappropriation claims rather than right of privacy/publicity claims. We would also elaborate on the relationship between the common law and statutory claims: "If the plaintiff is asserting misappropriation of more than one aspect of the plaintiff's identity ~~more than one privacy or a right of publicity~~, give an introductory instruction so stating ~~stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing~~. One's name, voice, signature, photograph, and likeness are protected under both the common law and under Civil Code section 3344. While the term "identity" is sometimes used to refer to the statutorily protected categories, a plaintiff's "identity" is protected only under the common law and not under the statute. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, *Appropriation of Name or Likeness*, which sets forth the common-law cause of action, will normally be given."	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.

Instruction(s)	Commenter	Comment	Committee Response
		d. We would add language to the Directions for Use stating to select the aspect of the plaintiff's identity that is at issue where those terms appear in brackets.	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required. The committee is recommending consideration of other possible changes.
1804B. Use of Name or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. The essence of the statutory law claim is misappropriation of name or likeness. We believe the introductory paragraph in the instruction should describe the claim in terms of "misappropriation" of a specific aspect of the plaintiff's identity rather than as "violation" of the right of privacy or publicity. The jury need not understand the right of privacy/publicity framework to understand this claim and need not be burdened with those terms. We would revise the introductory paragraph as follows: "[*Name of plaintiff*] claims that [*name of defendant*] ~~violated~~ misappropriated [his/her/*nonbinary pronoun*] ~~right to [privacy/publicity/privacy and publicity]~~ [name/voice/signature/ photograph/likeness]. To establish this claim, [*name of plaintiff*] must prove all of the following:	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle. Because the proposed revisions to CACI No. 1804B are more clarifying than substantive, the committee recommends deferring the proposed changes to also consider California Lawyers Association's suggestions.
		b. Consistent with the above, we would revise the third paragraph in the Directions for Use to refer to	This comment is beyond the scope of the invitation to

Instruction(s)	Commenter	Comment	Committee Response
		misappropriation claims rather than right of privacy/publicity claims. We would also elaborate on the relationship between the common law and statutory claims:	comment. The committee will consider it in its next release cycle.
		c. We would add language to the Directions for Use stating to select the aspect of the plaintiff's identity that is at issue where those terms appear in brackets.	This comment is beyond the scope of the invitation to comment. The committee will consider it in its next release cycle.
	Orange County Bar Association by Christina Zabat-Fran President	Agree as modified. The November 2024 effective date for this revision should be included at the line just above "Directions for Use."	The committee is recommending consideration of other possible changes. A revision date will be included in any future proposal.
1805. Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III) (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. Consistent with our comments above, we would revise the introductory paragraph to refer to "misappropriation" rather than "violation" of right of privacy/publicity: "[*Name of defendant*] claims that [he/she/*nonbinary pronoun*] has not ~~violated~~ misappropriated [*name of plaintiff*]'s ~~right of [privacy/publicity/ privacy and publicity]~~ [name/voice/signature/ photograph/likeness/identity] because the [*insert type of work, e.g., "picture"*] is protected by the First Amendment's guarantee of freedom of speech and expression. To succeed, [*name of defendant*] must prove either of the following:"	The committee will consider California Lawyers Association's comment in its next release cycle. Because the proposed revisions to CACI No. 1805 are more clarifying than substantive, the committee recommends deferring the proposed changes to also consider CLA's suggestions.
		b. *Comedy III*, *Winter*, and other opinions use various language to describe the principal inquiry. We would	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		revise element 1 to reflect the language we believe would be most understandable to a jury. We would delete "celebrity" because "other person" includes any celebrity. "1. That ~~the [*insert type of work, e.g., 'picture'*] adds significant creative elements to~~ [*name of plaintiff/~~celebrity/~~other person*]'s [name/voice/signature/photograph/likeness]~~, giving it a new expression, meaning, or message~~ contained in [*name of defendant*]'s [*insert type of work*] is so transformed that [*name of defendant*]'s [*insert type of work, e.g., 'picture'*] is primarily [*name of defendant*]'s own creative expression, meaning or message rather than a literal depiction of [*name of plaintiff/other person*]'s [name/voice/signature/ photograph/likeness];"	
		c. We would delete the language "which may involve privacy rights or the right of publicity" and the sentence that follows in the first paragraph of the Directions for Use.	No further response required.
		d. We would add language to the Directions for Use stating to select the aspect of the plaintiff's identity that is at issue where those terms appear in brackets.	No further response required.
	Bruce Greenlee Attorney (ret.) Richmond	1. X ref back to 1803 for the meaning of the right to publicity.	The committee will consider Mr. Greenlee's suggestions during its next release cycle.
		2. The elements provide that the person whose [name, image, or likeness] has been expropriated is some celebrity or person other than the plaintiff. This change has not been made in the intro paragraph,	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		which references only the plaintiff. If someone other than the plaintiff is at issue, there should be some explanation in the DforU as to how it could be that X can sue for nil expropriation of Y. Can I really sue if somebody is ripping off Jason Purdy?	
	Orange County Bar Association by Christina Zabat-Fran President	Disagree.	The committee recommends deferring the proposed changes to consider California Lawyers Association's proposed changes to CACI No. 1805, as well as to consider OCBA's opposition to the proposal and its suggested changes.
		At Item 1 of the Instruction, the revision would strike "something new" and substitute "significant creative elements." It is believed "transformative elements" is a more accurate phrase and it is suggested that it be incorporated into the Instruction rather than "significant creative elements." Item 1 of the Instruction sets forth the transformative use defense aka the transformative defense aka the transformative test. Cases discussing this defense/test generally use the phrase "transformative elements" to describe the creative contribution of a defendant to the likeness of a celebrity, for example, such that the likeness is markedly changed to become primarily the defendant's own expression. The California Supreme Court noted, "[t]his inquiry into whether a work is 'transformative'	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		appears to us to be necessarily at the heart of any judicial attempt to square the right of publicity with the First Amendment." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404.	
		The drafters of this Instruction, however, do not use the adjective "transformative" or the phrase "transformative elements," but have used "something new" and now propose "significant creative elements" to describe the questioned product of the defendant's efforts. It is recognized both these phrases derive from caselaw, however, neither connote the change-factor inherent in "transformative," even when coupled with the phrase "giving it a new expression, meaning, or message," found in the last two lines of this Item and not part of the current revision. Quoted by the Court in Comedy III from a U.S. Supreme Court case discussing copyright and the fair use doctrine, the phrase reads, "adds something new...altering the first [work] with new expression, meaning, or message...(emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404. "Altering" indicates the change-factor operating on the first work such that the questioned work reflects the defendant's own expression, meaning, or message. As written, any word or phrase indicating this change-factor is absent from Item 1 and from the Instruction.	No further response required.
		For these reasons, rather than the proposed phrase "significant creative elements," it is suggested that "transformative elements" be used in the Instruction addressing the transformative defense. If it is believed that	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		this phrase is too conclusory or would not be readily understood by a jury, then it is suggested that a future revision be made to the last two lines of Item 1, more consistent with caselaw and replacing "giving it" with a phrase which indicates the necessary factor of marked change visited upon the first work and reflected in the questioned work.	
		At Item 2, the revision would strike "fame" and substitute "name/voice/signature/photograph/likeness," which list is set forth in both Civil Code section 3344 and 3344.1. It is believed "fame" is a term more accurately reflecting the source of economic value and is readily understood by a jury. It is suggested that it remain in the Instruction. In Comedy III, the Court observed that celebrities take on "public meaning;" that for some, celebrities take on "personal meaning;" and that alternate versions of celebrity images attempt to redefine the "celebrity's meaning." The Court noted the "public prominence" of celebrities, and that they "fashion their personae," working on them over periods of time and with intention, "unique personal creations" being the result. See Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 397. These phrases indicate the Court recognized that celebrity goes beyond name, voice, signature, photograph, or likeness. A name, for example, would have no economic value without the associated celebrity and it is the fame which makes them a celebrity in the first place. The economic value derives from the fame. As the Court stated, "...the right of publicity holder possesses...a right to	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		prevent others from misappropriating the economic value generated by the celebrity's fame through the merchandising of the 'name, voice, signature, photograph, or likeness' of the celebrity (emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 403. For these reasons, it is suggested that "fame" be retained in Item 2 of the Instruction	
3708. Peculiar-Risk Doctrine (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Bruce Greenlee Attorney (ret.) Richmond	First paragraph of the new DforU: Revise as follows: This instruction may be used ~~in cases in which~~ if the plaintiff seeks to hold the hirer of an independent contractor vicariously liable for the contractor's torts because the work for which the contractor was hired involves a special risk arising out of the nature of the work or its location. [*Vargas v. FMI, Inc.* (2015) 233 Cal.App.4th 638, 646−647 [182 Cal.Rptr.3d 803].	The committee agrees in part. The committee endorses the language changes suggested, especially because adding the prepositional phrase is supported and adds clarity to the first sentence. The committee does not recommend adding a citation to *Vargas* in the Directions for Use because it is already included in the Sources and Authority.
	Horvitz & Levy LLP by Stephen E. Norris and Steven S. Fleischman Burbank	**B. Proposed revisions to CACI No. 3708.** We likewise support the Committee's proposed revision to CACI No. 3708 (peculiar risk), which properly notes that	The committee acknowledges Horvitz & Levy LLP's support for the proposed changes.

Instruction(s)	Commenter	Comment	Committee Response
		the instruction should *not* be given if an independent contractor (or its employee) seeks to hold the hirer or general contractor vicariously liable under the peculiar risk doctrine for injuries arising from the work performed by the independent contractor for the hirer, citing *Gonzalez v. Mathis* (2021) 12 Cal.5th 29.) Similarly, we support the instruction to the extent that it notes that instead of giving an instruction on the peculiar risk doctrine, the court should give instead, if applicable, CACI No. 1009B, Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control. These proposed modifications are fully consistent with *Gonzalez* and other Supreme Court decisions applying the *Privette* doctrine.	
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
3713. Nondelegable Duty (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Bruce Greenlee Attorney (ret.) Richmond	1. I guess the idea behind the change is that "independent contractor" is too narrow cuz it could be some other kind of entity. But it has to be some entity within the universe of agency, so is "third party" too broad? None of the cases cited in the S&A use this term. Maybe using "hired" limits the universe. How about "[independent contractor/ *other business entity*].	The committee does not see improved clarity in offering "other business entity" as an option in the brackets. The committee recommends the nonsubstantive change to the bracketed language because "independent contractor" may

Instruction(s)	Commenter	Comment	Committee Response
			suggest the instruction is applicable in premise liability cases governed by the *Privette* doctrine. To make that issue more plain, the committee recommends also removing the bracketed example of repair the roof.
		2. Note that some cases refer to "independent contractor or employee." If the reason for the change is to capture "employee," more changes would be needed. One doesn't "hire" an employee in the same sense that one hires an independent contractor.	The committee does not recommend substantive changes to the instruction at this time.
	Horvitz & Levy LLP by Stephen E. Norris and Steven S. Fleischman Burbank	**C. Proposed revisions to CACI No. 3713.** Conversely, we believe that the Committee's proposed July 2024 revisions to CACI No. 3713, the nondelegable duty rule, do not go far enough. In its present form, that instruction provides that certain statutory and regulatory duties, including duties imposed by Cal-OSHA regulations, are nondelegable. Neither the "Directions for Use" nor the cited "Sources and Authority" refer, however, to the many decisions discussing the impact of the *Privette* doctrine on plaintiffs' claims that a hirer owed the plaintiff a nondelegable duty of care based on specific statutes, regulations, and ordinances. Consistent with the *Privette* doctrine, a use note should be added to that instruction, similar in form to the use note added to CACI No. 3708, stating that the instruction should generally *not* be given where an independent contractor (or its employees) seek to impose a nondelegable duty on a hirer	Although these comments are not entirely beyond the scope of the invitation to comment, the suggested changes would benefit from an opportunity for public comment from all stakeholders. The committee will consider these comments during its next release cycle.

Instruction(s)	Commenter	Comment	Committee Response
		to comply with Cal-OSHA provisions and other statutes, regulations, and ordinances imposing duties on property owners and other hirers of contractors. Our suggestion regarding CACI No. 3713 is consistent with the *Acosta* court's comment that the Committee should consider whether CACI No. 3713 should be given in conjunction with instructions under the *Privette* doctrine. (*Acosta, supra,* 96 Cal.App.5th at p. 665, fn. 7.) As is implicit in *Acosta*, instructions suggesting that a hirer generally owes contractors and their employees nondelegable duties of care are antithetical to the *Privette* doctrine and should therefore ordinarily not be given in an action by a contractor or contractor's employee for injuries sustained as a result of an alleged dangerous condition on the very premises where the contractor was hired to provide services on behalf of the property owner. *Privette's* general rule of hirer nonliability is based on "a strong presumption under California law that a hirer of an independent contractor *delegates* to the contractor all responsibility for workplace safety." (*Gonzalez, supra,* 12 Cal.5th at p. 37, emphasis added; see *id.* at 41 ["delegation as the key principle" supporting *Privette*]; accord *Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 264 (*Sandoval*).) This delegation principle is rooted in the premise that, "[w]hen an independent contractor is hired to perform inherently dangerous construction work, that contractor, unlike a mere employee, receives authority to determine how the work is to be performed and assumes a corresponding responsibility to see that the work is performed safely." (*Tverberg v. Fillner Construction, Inc*. (2010) 49 Cal.4th 518, 528; accord	

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		SeaBright Ins. Co. v. US Airways, Inc. (2011) 52 Cal.4th 590, 602 (*SeaBright*).) As a result of the delegation of responsibilities that occurs when a contractor is retained, a hirer generally 'has *no duty* to act to protect the [contractors or their employees] when the contractor fails in that task.' " (*SeaBright, supra,* 52 Cal.4th at p. 602, emphasis added.) Rather, "[w]hatever reasonable care would otherwise have demanded of the hirer, that demand lies now only with the contractor. If a contract worker becomes injured after that delegation takes place, we presume that the contractor alone—and not the hirer—was responsible for any failure to take reasonable precautions." (*Sandoval*, *supra*, 12 Cal.5th at p. 271; see *Gonzalez, supra,* 12 Cal.5th at p. 41.) In light of the foregoing discussion of the limitations on the nondelegable duties doctrine imposed by the *Privette* doctrine, *Acosta* was correct to question the propriety of giving an instruction on the concept of "nondelegable" duties under CACI No. 3713 in an action brought by a contractor against a hirer for work-related injuries sustained by the contractor. CACI No. 3713's broad assertion that a defendant "has a duty that cannot be delegated to another person" as a result of statute, regulation, ordinance will often be in direct contravention of the *Privette* doctrine because, as noted, in hiring a contractor, the hirer, as a matter of law, *delegates to the contractor* the duty to ensure the safe performance of the contract work. In light of the foregoing authorities, an appropriate use note should be added to CACI No. 3713 admonishing that	

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		the instruction should generally not be given in a case brought by an injured contractor or contractor's employee that is governed by the *Privette* doctrine. (*SeaBright, supra,* 52 Cal.4th at p. 602 [hirer has no duty to ensure that contractor's comply with Cal-OSHA safety regulations]; *Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1091[owner of commercial property owed window washers had no nondelegable duty of care to comply with statutory and regulatory provisions requiring that owners install attachment points to which window washers could attach descent apparatus used to clean windows]; accord, *Gonzalez, supra,* 12 Cal.5th at p. 48 ["even where an unsafe condition exists on the premises due to the landowner's failure to comply with specific statutory and regulatory duties, the landowner is not liable because it is the contractor who is responsible for its own workers' safety"].) **CONCLUSION** Thank you for your consideration of the foregoing comments.	
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	No response required.
4328. Affirmative Defense—Tenant Was Victim of Abuse or Violence (Revise)in the	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revision to the instruction.	No response required.
		b. The affirmative defense established by Code of Civil Procedure section 1161.3, subdivision (b)(2) applies only if "the landlord has received documentation evidencing abuse or violence . . . ." (*Ibid.*) VF-4328 appropriately includes a question on whether the plaintiff received documentation, but this instruction does not include the	The committee agrees that element 1 omitted the plaintiff's receipt of documentation. The committee recommends adding it to the existing

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		plaintiff's receipt of documentation as an element of the affirmative defense. We believe the instruction should be revised to include the plaintiff's receipt of documentation as an element of the affirmative defense.	language of element 1. The committee also recommends refining element 4 to specify the nature of the lawsuit for additional clarity.
		c. We would delete the first sentence in the fifth paragraph of the Directions for Use without a case stating that the question is unsettled. We agree with the rest of the paragraph stating that the statute provides that the court shall determine certain matters.	The committee does not endorse removing the first sentence in the fifth paragraph of the Directions for Use. The sentence indicates that there is no case addressing the issue and the statutory language has not been construed.
	Bruce Greenlee Attorney (ret.) Richmond	1. I'm guessing that a "partial eviction" means that if the perp and the victim live in the same apartment, the landlord can evict the perp and not the victim. The DforU should say that explicitly to define "partial eviction." And I would not use the term "partial eviction" in the instruction undefined. The jury won't know what it means.	"Partial eviction" is a statutory remedy defined in Code of Civil Procedure section 1174.27. The committee has revised the instructional text to eliminate the term "partial eviction" because that term is more explanation than the jury needs. "Eviction of only that person [the perpetrator of abuse or violence]" without the modifier works well in the optional sentence. The committee believes that the new optional sentence in the instruction text explains the

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			concept of evicting only the perpetrator. For additional clarity, the committee recommends adding information at the end of the fourth paragraph in the Directions for Use describing section 1174.27's partial eviction process in more general terms.
		2. I guess you have concluded that "same dwelling unit" means the same apartment, not just the same apartment building. I would still flag this issue in the DforU. Not sure if "living unit" really resolves it.	By statute, a process for eviction of only the perpetrator of the violence or abuse now exists because of recent legislation that allows for eviction of only the perpetrator if the perpetrator and victim are co-tenants of the same dwelling unit. (Sen. Bill 1017 (Stats. 2002; ch. 558); see Code Civ. Proc., § 1174.27.) If the perpetrator and victim do not reside together in the same unit, then the victim has as an available affirmative defense the protection from eviction set out in section 1161.3.
	Orange County Bar Association by Christina Zabat-Fran President	Agree as modified. The OCBA believes that a quote of the following from the Judicial Council Comments to its SPR23-10 proposal should be added in the Directions for	Senate Bill 1017 is not the most recent amendment to Code of Civil Procedure

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		Use: "When enacting SB 1017, the Legislature appears to have inadvertently created an internal inconsistency in statute. Briefly, section 1161.3(d)(2) requires the court to follow the partial eviction procedure if the perpetrator is a tenant in residence in the same dwelling unit as the victim. However, section 1161.3(d)(2) only applies if the landlord *violates* section 1161.3 and terminating a tenancy because the perpetrator is a tenant in residence in the same dwelling unit as the victim is expressly permitted under that section. (See § 1161.3(b)(2)(A).) Thus, there is no way that all the requisite circumstances would be present for section 1174.27 to apply. Based on an understanding that the Legislature will further amend the statutes to address this issue, the committee is proposing the attached forms to implement the new procedure, and will modify the proposal is [sic "as"] appropriate to reflect further changes in the statute later this year."	section 1161.3. The content suggested by the OCBA from an advisory committee's Report to the Judicial Council for SPR23-10—a spring proposal for Judicial Council forms—has been mooted by subsequent amendments to section 1161.3. (See Stats. 2023, ch 478 § 16 (Assem. Bill 1756), effective January 1, 2024.)
		A reference should also be made to *Elmassian v. Flores* 69 Cal.App.5th [Supp.] 1 (2021) which indicated that the jury should decide if the landlord's purpose in wanting to evict was because of abuse or violence even if the landlord characterized its lawsuit as only for "nuisance."	*Elmassian v. Flores* (2021) 69 Cal.App.5th Supp. 1 [284 Cal.Rptr.3d 401] discusses the statute before the most recent amendments. The committee does not recommend including *Elmassian* in the Sources and Authority.
		It is questionable whether paragraph 3 of the Section 1 requirements is accurate or a necessary finding since this affirmative defense is clearly available even if the perpetrator was a resident of the same living unit.	The committee acknowledges that the statutory scheme is complex. Code of Civil Procedure 1161.3 indicates a complete defense exists if the

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			perpetrator of the abuse or violence is not a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member, unless each clause of subparagraph (B) of paragraph (2) of subdivision (b) applies. Although the partial eviction process of section 1174.27 may apply if the perpetrator is a tenant of the same living unit, the committee believes that element 3 of the first part of CACI No. 4328 accurately tracks section 1161.3 and that an instruction on section 1174.27 would require different elements.
		The 3 requirements of Section 2 may not be an accurate statement of CCP §1161.3(b)(2) since the tenant can invoke CCP § 1174.27 in order to obtain a partial defense for the tenant according to the current inconsistent language of both sections.	CACI No. 4328 is not for use in the situation described. It would need to be modified significantly to address the partial eviction process in section 1174.27. The committee will continue to monitor the law on these statutes and will consider developing an instruction for

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			use when the perpetrator and victim are cotenants.
		The new language added at the last sentence should be expanded to more succinctly delineate what types of questions will be decided by the judge and which by the jury since CCP § 1174.27 is ambiguous as to what was intended by granting certain "remedies" to the "court".	The committee does not agree that the jury necessarily needs to be told more about what the judge must decide for an eviction of the perpetrator only.
VF-4328. Affirmative Defense—Victim of Abuse or Violence (New)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We believe the verdict form could be simplified by reordering the questions. Questions 1 and 4 concern the affirmative defense under Code of Civil Procedure section 1161.3, subdivision (b)(1), while the other questions concern the exception under section 1161.3, subdivision (b)(2) and section 1174.27. We would renumber question 4 as question 2 and allow the jury to stop if the answer to either question 1 or 2 is no.	The committee agrees with the suggestion and recommends renumbering question 4 as question 2 in the verdict form.
		There are two alternative grounds to establish the exception. The questions for each ground should be made optional with directions in the Directions for Use to include the questions only if the ground is at issue. Current question 2 (which we would renumber as question 3) and current question 3 (which we would renumber as question 4) should both be made optional.	The committee does not recommend making question 3 (renumbered from question 2) optional. Whether the perpetrator of abuse or violence resides as a tenant in the same living unit is relevant to both section 1161.3 and section 1174.27. The directions for question 3 tell jurors to skip question 4 (renumbered from question 3) if their answer to question 3 is No.

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		We agree that current questions 5 through 7 should be optional.	No response required.
		b. We would revise the directions after question 7 to state what to do if the answer is yes for greater clarity, consistent with the directions after prior questions: "~~Answer question 8 unless your answer to~~ If your answer to question 2 above is ~~no~~ yes, then answer question 8. If you answered no to question 2 above, stop here, answer no further questions, and have the presiding juror sign and date this form."	The committee agrees that additional clarity in the directions after question 7 would be helpful. The committee recommends telling the jury to answer question 8 regardless of the answer to question 7 unless the answer to question 3 (renumbered from question 2) was no.
		c. The fourth paragraph in the Directions for Use states when to omit optional questions 5 through 7. We believe it would be more helpful and easier to understand if this were stated in terms of when to include the optional questions: when a partial eviction based on Code of Civil Procedure section 1161.3, subdivision (b)(2)(B) is at issue.	For additional clarity, the committee recommends a new sentence in the fourth paragraph of the Directions for Use emphasizing that questions 5 through 7 are optional and addressing when to include them.
	Bruce Greenlee Attorney (ret.) Richmond	DforU: Again "partial eviction" needs an explanation.	The committee does not agree that the Directions for Use for this verdict form needs to repeat information about the partial eviction remedy under Code of Civil Procedure section 1174.27, which is explained in CACI No. 4328.

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	Orange County Bar Association by Christina Zabat-Fran President	The OCBA believes that this proposed new verdict form is inaccurate, confusing, and not effective as written because; (1) if question 2 is answered in the positive then all of the remaining questions should be answered and the instructions are confusing to any jury as to what to do next;	The committee appreciates the feedback. The committee believes that the directions for question 3 (renumbered from question 2) accurately direct the jury how to answer the next questions. The committee has updated the directions after question 4 to instruct the jury to answer question 5.
		(2) question 3 is unnecessary to the verdict;	The committee believes that question 4 (renumbered from question 3) is necessary. See, for example, Judicial Council form UD-110P, *Judgment—Unlawful Detainer Partial Eviction Attachment*, which calls for the name of the perpetrator.
		(3) question 5 is inaccurate since if answered "No" then question 8 & 9 should still be answered since a partial eviction is still possible;	The Directions for Use explain that the directions after questions 5 through 7 may need to be revised if the partial eviction process is possibly at issue. Questions 5 through 7 are related and may all require the same modification to the directions. The committee has

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			recommended emphasizing that these three questions are optional as suggested by the California Lawyers Association above.
		(4) the Directions for Use should also reference CCP §1161.3 and Civil Code §1946.7 for a better understanding;	For improved clarity, the committee recommends adding a direct reference to section 1161.3 in the first sentence of the Directions for Use. CACI No. 4328 is based on section 1161.3, and the title of that instruction includes a citation. (Note that CACI's practice, however, is not to include the parenthetical statute when cross referencing an instruction in the Directions for Use.) With respect to Civil Code section 1946.7, the committee is unconvinced that including a reference to section 1946.7 in the verdict form's Directions for Use would be helpful.
		(5) the Directions for Use must be clarified in order to make the form understandable, consistent with the statutes, and more accurate.	The committee will consider further revisions to improve the verdict form in future release cycles. The committee welcomes additional feedback

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			to improve the content of the instructions and verdict forms. The committee believes that the verdict form as refined after public comment is consistent with the relevant statutes. As the Directions for Use caution, special verdict forms are intended only as models. They may need to be modified depending on the facts of the case.
4401. Misappropriation of Trade Secrets—Essential Factual Elements (Revise)	California Employment Lawyers Association by Barbara Figari Cowan, Chair	The California Employment Lawyers Association (CELA) submits this letter in response to the proposed revisions to the California Civil Jury Instruction (CACI) No. 4401 in Proposed CACI Nos. 4409 and 4410. We respectfully request that the Judicial Council not adopt these revisions, as they fundamentally alter well-established California law, underlying public policy, and the established understanding of the elements required to prove a cause of action for misappropriation of trade secrets under California law. Specifically, we are concerned that these revisions suggest that damages are not an element of the cause of action when tried to a jury, which could lead to unjust outcomes and have a chilling effect on whistleblowers who rely on legal counsel to address illegal or unethical conduct. This is fundamentally inconsistent with the distinction between legal and equitable remedies, including the jury's role in adjudicating the former.	The committee thanks CELA for the information. To fully consider these comments, the committee does not recommend moving forward with the changes proposed at this time. These comments will be considered in the next cycle.

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		The flawed amendment is based exclusively on an egregious misreading of the case it relies upon, *Jarrells*, a case which held that actual harm and/or unjust enrichment is not required for an award of equitable remedies by the Court, but which also expressly reaffirms the long standing requirement that harm or unjust enrichment must be proven for any award of damages by a jury. (*Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 569–570 ["To be sure, **where (as here) a trier of fact finds misappropriation** has occurred under Civil Code section 3426.1, subdivision (b), **the next step is to determine whether the misappropriation caused plaintiff to suffer "actual loss" or caused defendant to be unjustly enriched."]** [emphasis added].) Thus, make no mistake, adopting the proposed amendments would fundamentally change the law, in ways that were expressly refuted by the very same opinion the proposed amendments cite in support of such a radical change. Moreover, to change the law in the ways suggested by the amended instructions would have a chilling effect on the lawful exercise of constitutional rights by workers throughout the State of California. In this regard, California law and the Constitutional right to petition both provide workers with the absolute right to disclose information and documents, including even privileged information and documents, to their legal counsel, in order to evaluate and prosecute any claims they may have against their former employers. (*Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106; *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 314-315).	

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		The need for an employer to prove that any such documents *and* information constitute "trade secrets" and that the employer was harmed by such disclosure, coupled with the protections of California's Anti-SLAPP statute and litigation privilege case law, has served as a deterrent to frivolous counterclaims brought by employers to deter such legitimate and constitutionally protected free speech and petitioning activity. (*Id.*). The proposed amendment to CACI No. 4401 with Proposed CACI Nos. 4409 and 4410 would weaken these important protections and encourage frivolous "trade secrets" claims against employees who have done nothing more than take lawful action to protect and enforce their legal rights, in this regard. For the reasons set forth herein below, we respectfully request that the Judicial Council appropriately reject the proposed changes to these jury instructions, preserving the long-standing requirement that actual harm must be proven to claim damages in a jury trial and ensuring that employees remain free to consult with and disclose information to their attorneys without being subjected to frivolous and unconstitutional counterclaims. **Damages as an Element of Trade Secret Misappropriation** Under the California Uniform Trade Secrets Act (CUTSA), the plaintiff must demonstrate that the misappropriation of a trade secret has caused harm, or that the defendant has been unjustly enriched, to prevail in a misappropriation claim for damages. The requirement to prove damages as part of the cause of action is not merely	

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		a procedural nuance but a substantive element essential to the integrity of trade secret law. The proposed revisions appear to rely exclusively on the reasoning from a single appellate case, *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 569–570 which states that the CUTSA "does not require proof of causation or damages as elements of a claim for misappropriation" in order to recover specified equitable remedies. The *Jarrells* opinion itself is quite clear that its holding does not conflict with, and thus is not intended to change, CACI 4401's requirement that damages or unjust enrichment be proven in jury trials, precisely because the jury instruction applies to legal remedies to be awarded by the jury instead. (*Ibid*. at 571 ["The instruction addresses the issues of damages and unjust enrichment because, by definition, those are the only remedies a jury could consider or award for an adjudicated misappropriation."].) In other words, *Jarrells* stands for the unremarkable position that, where damages and/or unjust enrichment have not been proven to a jury's satisfaction, the Court may nevertheless award the statute's equitable remedies of an injunction and/or "reasonable royalty" for the purported trade secrets theft: **To be sure, where (as here) a trier of fact finds misappropriation has occurred under Civil Code section 3426.1, subdivision (b), the next step is to determine whether the misappropriation caused plaintiff to suffer "actual loss" or caused defendant to**	

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		be unjustly enriched. (Id., § 3426.3, subd. (a).) But a jury finding that neither damages nor unjust enrichment has been proven does not end the remedy inquiry. The California UTSA provides that if neither actual loss nor unjust enrichment can be proven, the trial court may award a reasonable royalty as a remedy for the misappropriation. (Id., § 3426.3, subd. (b).) The California UTSA also authorizes the court to enjoin actual or threatened misappropriation. (Id., § 3426.2, subd. (a).) (*Jarrells*, supra, 100 Cal.App.5th at 570 [emphasis added].) This, of course, merely reflects the long-standing division between legal and equitable remedies, as well as the well-known division of labor when adjudicating those remedies. (*Rincon EV Realty, LLC v. CP III Rincon Towers, Inc.* (2017) 8 Cal.App.5th 1, 20 ["While a litigant in a civil action generally has a constitutional right to a jury trial on 'legal' causes of action, there is no such right with respect to 'equitable' causes of action or 'equitable' remedies."], citing *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 155-156 and *Darbun Enterprises, Inc. v. San Fernando Community Hospital* (2015) 239 Cal.App.4th 399, 408-409.) As the quoted language from *Jarrells* above makes plain, a jury trial on damages still requires proof of harm or unjust enrichment, even if the Court-administered equitable remedies of an injunction and/or royalty do not. (J*arrells*, *supra*, 100 Cal.App.5th at 570.)	

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		It is not clear who has proposed the amendments in question, but whomever has done so appears to misunderstand this fundamental distinction between legal and equitable remedies. As a result, they have simply misread *Jarrells* as overturning decades of jurisprudence that expressly requires proof of harm or unjust enrichment for an award of damages, when *Jarrells* was merely attempting to clarify that the CUTSA's equitable remedies contain no such requirement. Even if this were a correct interpretation of the *Jarrells* opinion (it is not), such an interpretation would make *Jarrells* an extreme outlier with the broader and well-established jurisprudence, holding that damages are required to obtain legal remedies, both within and beyond California, throughout all of tort law. In sum, until the Supreme Court itself endorses such a radical departure from hundreds of years of established tort law, it is premature and clear reversible error to allow a single appellate case to form the basis for such a monumental change in the applicable CACI jury instructions, particularly where, as here, the appellate case itself expressly refutes the radical interpretation being advanced by the proposed amendment. **Case Law Supporting Damages as an Essential Element of CUTSA Legal Remedies:** Numerous appellate cases, including one already cited in the CACI jury instructions at issue (the citation of which is not proposed to be removed), make clear that damages **are** an element of the cause of action itself, whenever presented to the jury for an award of such damages. Some of these cases are:	

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		1. *Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 240. The court in *Silvaco* recognized that under CUTSA, a plaintiff must show "actual loss caused by misappropriation" or that the defendant has "unjustly gained" from the misappropriation, highlighting the need for proof of harm or unjust enrichment as a foundational aspect of the claim. 2. *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26,65. The court reaffirmed that damages, either in the form of actual loss or unjust enrichment, are central to the remedy under CUTSA, thereby requiring proof of such damages as part of the cause of action. 3. *Advanced Fluid Systems, Inc. v. Huber* (3rd Cir. 2016) 958 F.3d 168, 179. In applying Pennsylvania's version of UTSA, which closely mirrors California's, the Third Circuit held that proof of damages or unjust enrichment is required to succeed in a misappropriation claim, stressing that without such proof, the cause of action cannot be sustained. 4. *Restatement (Third) of Unfair Competition* § 40, comment c (1995): The Restatement, while not binding, provides persuasive authority, indicating that a cause of action for trade secret misappropriation traditionally requires proof of damages or unjust enrichment resulting from the misappropriation. These authorities underline that damages have consistently been recognized as an essential element of a trade secret misappropriation claim, integral to establishing the	

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		wrongful nature of the defendant's conduct and the plaintiff's entitlement to relief. Once again, *Jarrells* did not purport to overrule or depart from these authorities, but rather merely clarified that they do not apply to CUTSA's *equitable* remedies. Moreover, *Jarrells* itself makes plain that those equitable remedies are intended to be resolved by the Court, rather than a jury, and thus *Jarrell's* holding by definition could not possibly have any impact on the propriety of instructions given to the jury when adjudicating the *legal* remedies that fall within their exclusive purview. (*Jarrells, supra*, 100 Cal.App.5th at 570 [emphasis added].) Or as *Jarrells* itself put it: **The instruction addresses the issues of damages and unjust enrichment because, by definition, those are the only remedies a jury could consider** or award for an adjudicated misappropriation. **The other remedies available to a plaintiff whose trade secrets have been misappropriated—reasonable royalty and injunction—may be awarded only by the trial court.** (Civ. Code §§ 3426.2, 3426.3, subd. (b).) Thus, **CACI No. 4401 simply instructs** the jury that for Applicant to "succeed on [its] claim" **for an award of damages or unjust enrichment, it must prove** not only the two statutory elements of misappropriation but also **that it suffered damages or that defendants have been unjustly enriched."** (*Jarrells, supra*, 100 Cal.App.5th at 571.)	

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		Distinguishing *Applied Medical Distribution Corp. v. Jarrells* The reliance on *Jarrells* to justify the exclusion of damages as an element is misplaced for several reasons, including the apparent failure of the Proposed CACI Nos. 4409 and 4410 author to appreciate the distinction between legal and equitable remedies as detailed above. Moreover, as misinterpreted by the Proposed CACI Nos. 4409 and 4410, the Jarrells decision would focus too narrowly on the statutory language regarding remedies, without fully addressing the doctrinal and policy implications of decoupling damages from the substantive cause of action. Doing so could result in liability **without a demonstrated harm**, which is not only inequitable but also inconsistent with fundamental principles of tort and contract law that require a showing of injury or loss. Indeed, if the Judicial Council adopts this approach for the instructions related to misappropriation of trade secrets, then it should likewise remove damages as an element of a cause of action for violations of the Fair Employment and Housing Act, because the same reasoning would apply. For every cause of action involving a Plaintiff employee, the Plaintiff has to prove that the defendant's conduct was a substantial factor in causing the Plaintiff's harm, even where the statute being enforced contains no express damages requirement. Amending this instruction to remove proof of harm as an element of an employer's favored tort would create an **even greater imbalance** than already exists for struggling workers, permitting	

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		employers to sue without proof of harm while still requiring employees to bear this burden in order to substantiate their own statutory rights and legal remedies. **Chilling Effect on Whistleblowers** The proposed revisions also raise serious concerns about their potential impact on whistleblowers, who play a vital role in exposing illegal or unethical conduct. Whistleblowers often must disclose sensitive information to their attorneys to build their cases and seek legal protection. It is well-established that this kind of disclosure is constitutionally protected free speech and petitioning activity when engaged in by employment law plaintiffs, even when the information divulged is privileged or confidential. (*See, e.g., Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106 [A former in-house counsel may use privileged information, with careful controls against inappropriate disclosure such as in camera review or limited admissibility of evidence, in order to pursue a wrongful termination claim against his or her former employer]; see also *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 314-315 ["Simple fairness therefore demands a lawyer pursuing a wrongful discharge action against her former employer be permitted to divulge to her own attorneys information reasonably necessary to the preparation and prosecution of the action even if the information may be a client confidence."].)) The revisions, if adopted, could create ambiguity around the legality of such disclosures and encourage employers to respond to such protected with frivolous CUTSA cross-	

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		complaints devoid of any allegation of harm, even when made in good faith and within the scope of cases like *Chubb* and *Paladino deeming such conduct protected free speech and petitioning activity.* The ambiguity and risk of cross-complaints, standing alone, could discourage whistleblowers from coming forward, fearing that the actions they necessarily must take to prove their case might expose them to liability under this expanded, unprecedented, and wholly illogical interpretation of trade secret misappropriation. Such a chilling effect would entirely undermine public policy and the protections afforded to whistleblowers under both state and federal law, such as the California Whistleblower Protection Act (Gov. Code, § 8547) and the federal Defend Trade Secrets Act (18 U.S.C. § 1833(b)), which **explicitly** protect whistleblowers who disclose confidential information to their attorneys or government officials. Moreover, if harm is no longer an element of trade secrets misappropriation, the ability to fairly conduct discovery in employment litigation will be severely undermined if not altogether eviscerated. Employers will be characterize all relevant communications, handbooks, policies, and the like as privileged "trade secrets" and refuse to disclose them, despite the absence of any harm suffered as a result of any such disclosure, and the discovery disputes that already serve all too frequently to clog and congest our law and motions calendars will only grow exponentially worse. Superior court judges will be the granular arbiters of frivolous trade secrets claims as to virtually every pertinent document in the litigation, with the employer no	

Instruction(s)	Commenter	Comment	Committee Response
		doubt pointing to the proposed CACI amendments as "proof" that it need not prove harm to treat these routinely discoverable documents as "privileged" from disclosure and use by the employee plaintiff. This, in turn, will severely undermine the legislative intent behind laws like the Fair Employment and Housing Act and Labor Code section 1102.5, which were intended to incentivize enforcement, eradicate discrimination, and ensure that employers abide by the law, rather than using CACI instructions such as those proposed here to chill, deter, intimidate, and prevent the lawful free speech and pursuit of legal rights by employment law plaintiffs. Finally, the remedy sought by the proponent of this amendment already exists under California law. Under the California Uniform Trade Secrets Act (CUTSA), when there is a finding of liability with no damages a court can grant attorney's fees to the prevailing party only (1) if the misappropriation claim was made in bad faith, (2) a motion to terminate an injunction was made or resisted in bad faith, or (3) if there is a finding of willful and malicious misappropriation.. These amendments would radically change the law to not only take away the element of damages, but also broadly expand the scope of remedies available without the prerequisite finding of bad faith or maliciousness. This is a fundamental change in the law that must be made by the Legislature, not through an amendment to a jury instruction. **Revisions to Jury Instructions Should Not Make New Law**	

Instruction(s)	Commenter	Comment	Committee Response
		Respectfully, the Judicial Council would be exceeding its authority by adopting these proposed changes. For the reasons outlined above, such changes would constitute new law rather than merely reflecting existing law. If such changes are desired, they must be made through a change to the statute by the Legislature, not through legally inconsistent amendments based on a clear misinterpretation of a single appellate decision. **Conclusion** In light of the above considerations, CELA respectfully urges the Judicial Council not to adopt the proposed revision to CACI No. 4401 in Proposed CACI Nos. 4409 and 4410. These revisions would not only misalign with established legal principles requiring damages as an element of trade secret misappropriation in any jury trial, but would also have a detrimental effect on whistleblower and employment protections writ large, thereby compromising the ability of individuals to seek justice and uphold ethical standards. We appreciate the Council's commitment to maintaining the integrity of California's legal system and urge careful reconsideration and rejection of these proposed changes.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	The committee does not recommend moving forward with the changes proposed at this time. California Lawyers Association's comments in support will be considered in the next cycle.

Instruction(s)	Commenter	Comment	Committee Response
	Consumer Attorneys of California Sacramento	The Consumer Attorneys of CA (CAOC) submits this letter in response to the proposed revisions to the California Civil Jury Instructions (CACI) Nos. 4401, 4409, and 4410. We respectfully request that the Judicial Council not adopt these revisions, as they fundamentally alter the established understanding of the elements required to prove a cause of action for misappropriation of trade secrets under California law. Specifically, we are concerned that these revisions suggest that damages are not an element of the cause of action, which could lead to unjust outcomes and have a chilling effect on whistleblowers who rely on legal counsel to address illegal or unethical conduct. **Damages as an Element of Trade Secret Misappropriation** Under the California Uniform Trade Secrets Act (CUTSA), the plaintiff must demonstrate that the misappropriation of a trade secret has caused harm, or that the defendant has been unjustly enriched, to prevail in a misappropriation claim. The requirement to prove damages as part of the cause of action is not merely a procedural nuance but a substantive element essential to the integrity of trade secret law. The proposed revisions appear to rely exclusively on the reasoning from a single appellate case, *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 569–570 which states that the California UTSA "does not require proof of causation or damages as elements of a claim for misappropriation." Instead, the decision positions damages as a remedy rather than a necessary	The committee thanks CAOC for the information. To fully consider these comments, the committee does not recommend moving forward with the changes proposed at this time. These comments will be considered in the next cycle.

Instruction(s)	Commenter	Comment	Committee Response
		element. While this interpretation is noted, it is crucial to emphasize that the reasoning in *Applied Medical* diverges from the broader, long-standing jurisprudence on trade secret misappropriation, both within and beyond California. As such, it is premature to make a single appellate case the basis a monumental change in the CACI jury instructions to be used statewide. **Case Law Supporting Damages as an Essential Element:** Numerous appellate cases, including one already cited in the CACI jury instructions at issue (the citation of which is not proposed to be removed), make clear that damages **are** an element of the cause of action itself, not merely a remedy. Some of these cases are: 1. *Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 240. The court in *Silvaco* recognized that under CUTSA, a plaintiff must show "actual loss caused by misappropriation" or that the defendant has "unjustly gained" from the misappropriation, highlighting the need for proof of harm or unjust enrichment as a foundational aspect of the claim. 2. *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 65. The court reaffirmed that damages, either in the form of actual loss or unjust enrichment, are central to the remedy under CUTSA, thereby requiring proof of such damages as part of the cause of action.	

Instruction(s)	Commenter	Comment	Committee Response
		3. *Advanced Fluid Systems, Inc. v. Huber* (3rd Cir. 2016) 958 F.3d 168, 179. In applying Pennsylvania's version of UTSA, which closely mirrors California's, the Third Circuit held that proof of damages or unjust enrichment is required to succeed in a misappropriation claim, stressing that without such proof, the cause of action cannot be sustained. 4. *Restatement (Third) of Unfair Competition* § 40, comment c (1995): The Restatement, while not binding, provides persuasive authority, indicating that a cause of action for trade secret misappropriation traditionally requires proof of damages or unjust enrichment resulting from the misappropriation. These authorities underline that damages have consistently been recognized as an essential element of a trade secret misappropriation claim, integral to establishing the wrongful nature of the defendant's conduct and the plaintiff's entitlement to relief. These authorities underline that damages have consistently been recognized as an essential element of a trade secret misappropriation claim, integral to establishing the wrongful nature of the defendant's conduct and the plaintiff's entitlement to relief. **Distinguishing *Applied Medical Distribution Corp. v. Jarrells*** The reliance on *Applied Medical* to justify the exclusion of damages as an element is misplaced for several reasons. Firstly, *Applied Medical* appears to isolate the CUTSA's remedial provisions without adequately considering the	

Instruction(s)	Commenter	Comment	Committee Response
		statute's broader interpretative context, including related case law that consistently treats damages as a necessary component of the cause of action. Moreover, the *Applied Medical* decision focuses narrowly on the statutory language regarding remedies, without fully addressing the doctrinal and policy implications of decoupling damages from the substantive cause of action. Doing so could result in liability without a demonstrated harm, which is not only inequitable but also inconsistent with fundamental principles of tort and contract law that require a showing of injury or loss. Indeed, if the Judicial Council adopts this approach for the instructions related to misappropriation of trade secrets, then it should likewise remove damages as an element of a cause of action for violations of the Fair Employment and Housing Act, because the same reasoning would apply. For every cause of action involving a Plaintiff employee, the Plaintiff has to prove that the defendant's conduct was a substantial factor in causing the Plaintiff's harm. This instruction would create an imbalance for employers who would not have to prove damages as an element of a cause of action that is unique to them, while employees would have this burden. **Chilling Effect on Whistleblowers** The proposed revisions also raise serious concerns about their potential impact on whistleblowers, who play a vital role in exposing illegal or unethical conduct. Whistleblowers often must disclose sensitive information	

Instruction(s)	Commenter	Comment	Committee Response
		to their attorneys to build their cases and seek legal protection. The revisions, if adopted, could create ambiguity around the legality of such disclosures, even when made in good faith and within the scope of legal counsel. This ambiguity could discourage whistleblowers from coming forward, fearing that their necessary actions to prove their case might expose them to liability under an expanded interpretation of trade secret misappropriation. Such a chilling effect would undermine public policy and the protections afforded to whistleblowers under both state and federal law, such as the California Whistleblower Protection Act (Gov. Code, § 8547) and the federal Defend Trade Secrets Act (18 U.S.C. § 1833(b)), which explicitly protect whistleblowers who disclose confidential information to their attorneys or government officials. **Revisions to Jury Instructions Should Not Make New Law** Respectfully, the Judicial Council would be exceeding its authority by adopting these proposed changes. Such changes would constitute new law. If such changes are desired, they must be made through a change to the statute by the Legislature. **Conclusion** In light of the above considerations, we respectfully urge the Judicial Council not to adopt the proposed revisions to CACI Nos. 4401, 4409, and 4410. These revisions would not only misalign with established legal principles	

Instruction(s)	Commenter	Comment	Committee Response
		requiring damages as an element of trade secret misappropriation but would also have a detrimental effect on whistleblower protections, thereby compromising the ability of individuals to seek justice and uphold ethical standards. We appreciate the Council's commitment to maintaining the integrity of California's legal system and urge careful reconsideration of these proposed changes.	
	Bruce Greenlee Attorney (ret.) Richmond	You are all in on the new case, *Applied Medical Distribution*. But it's not a [California Supreme Court] case, so don't you have a split of authority with 2018's *AMN Healthcare*, which supports causation and damages as elements of the claim (and cites the Current CACI instructions)? Can you just treat AMN as overruled and delete it from the S&A? I would think not.	The committee thanks Mr. Greenlee for the comments. To fully consider the public comments received on this instruction, the committee does not recommend moving forward with the changes proposed at this time. Mr. Greenlee's comment will be considered in the next cycle.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	The committee does not recommend moving forward with the changes proposed at this time. OCBA's comment in support will be considered in the next cycle.
4409. Remedies for Misappropriation of Trade Secret (Revise)	California Employment Lawyers Association by Barbara Figari Cowan, Chair	See CELA's comments for CACI No. 4401.	The committee does not recommend moving forward with the changes proposed at this time. CELA's comments

Instruction(s)	Commenter	Comment	Committee Response
			will be considered in the next cycle.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	The committee does not recommend moving forward with the changes proposed at this time. California Lawyers Association's comment in support will be considered in the next cycle.
	Consumer Attorneys of California Sacramento	See CAOC's comments for CACI No. 4401.	The committee does not recommend moving forward with the changes proposed at this time. CAOC's comments will be considered in the next cycle.
	Bruce Greenlee Attorney (ret.) Richmond	1. Element 2: Add "of a trade secret" after acquisition/use/disclosure."	The committee does not recommend moving forward with the changes proposed at this time. Mr. Greenlee's comments will be considered in the next cycle.
		2. It should be made clear that "harmed" and "harm" and "suffered harm" mean monetary loss.	No further response required.
	Orange County Bar Association by Christina Zabat-Fran President	Agree as modified. Two minor comments: The brackets in 1. should be consistent so that it reads: "1. That [[*name of plaintiff*] was harmed]/ [or] [[*name of defendant*] was unjustly enriched]; and"	The committee does not recommend moving forward with the changes proposed at this time. OCBA's comments

Instruction(s)	Commenter	Comment	Committee Response
			will be considered in the next cycle.
		2. It would be helpful to leave in the sentence "Both the statute and case law indicate that the question of a reasonable royalty should not be presented to the jury." That sentence is consistent with *Applied Medical Distribution Corp.* and helps explain why that remedy is not part of the CACI instruction.	No further response required.
4410. Unjust Enrichment (Revise)	California Employment Lawyers Association by Barbara Figari Cowan, Chair	See CELA's comments for CACI No. 4401.	The committee does not recommend moving forward with the changes proposed at this time. CELA's comments will be considered in the next cycle.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	The committee does not recommend moving forward with the changes proposed at this time. California Lawyers Association's comment in support will be considered in the next cycle.
	Civil Justice Association of California by Lucy Chinkezian Counsel Sacramento	See comment for CACI No. 374 regarding Restatements Generally.	The committee does not recommend moving forward with the changes proposed at this time. CJAC's comments will be considered in the next cycle.

ITC CACI 24-02
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Add and revise jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*).

Instruction(s)	Commenter	Comment	Committee Response
	Consumer Attorneys of California Sacramento	See CAOC's comments for CACI No. 4401.	The committee does not recommend moving forward with the changes proposed at this time. CAOC's comments will be considered in the next cycle.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	The committee does not recommend moving forward with the changes proposed at this time. OCBA's comment in support will be considered in the next cycle.
VF-4400. Misappropriation of Trade Secrets (Revise)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	The committee does not recommend moving forward with the changes proposed at this time. California Lawyers Association's comment in support will be considered in the next cycle.
	Bruce Greenlee Attorney (ret.) Richmond	Question 6: Same issue with use of "harm" untethered to monetary loss.	The committee does not recommend moving forward with the changes proposed at this time. Mr. Greenlee's comment will be considered in the next cycle.
	Orange County Bar Association by Christina Zabat-Fran President	Agree.	The committee does not recommend moving forward with the changes proposed at this time. OCBA's comment

ITC CACI 24-02
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Add and revise jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*).

Instruction(s)	Commenter	Comment	Committee Response
			in support will be considered in the next cycle.
All Instructions in CACI24-02	Brenda Martin Del Campo Management Analyst II Superior Court of California, County of San Bernardino	• Position on the Proposal: Agree with proposed changes • Would the proposal provide cost savings? No • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe): There should not be any impact to court staff, procedural processes or our case management systems. Jury instructions are instructions attorneys or parties propose to use for the Judicial Officer to instruct the jurors during trial. The instructions are discussed by trial counsel and the Judicial Officer then presented to the jurors. • Do you think the effective date allows enough time for implementation at the court? Yes	The committee thanks the commenter for the information.

Item number: 03

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: October 4, 2024

Rules Committee action requested [Choose from the drop-down menu below]:
Recommend JC approval (has circulated for comment)

Title of proposal: Family Law: Adoption Forms

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Adopt form ADOPT-203; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, ADOPT-215, ADOPT-230, and ADOPT-310

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail)*: Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): October 26, 2023
Project description from annual agenda:
Item 1(e)
As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will act only where necessary to allow courts to implement the legislation efficiently.

AB 1650 (Patterson) Family law proceedings: custody, parentage, and adoption (Stats. of 2023, Ch. 851)
Requires, in an adoption proceeding, each petitioner to inform the court in writing using specified Judicial Council forms, whether the petitioner has entered, or has agreed to enter, into a postadoption contact agreement with any person or persons.

Item 5. Revision of Adoption Forms. Revisions to adoption forms will be required if AB 1650 and AB 20 are signed by the Governor (see pending legislation above, items 1e and 1h). The committee has prioritized developing a separate form for stepparent adoptions because these adoptions have different requirements and the current single form for all adoption types is confusing. The committee also plans to develop an information sheet to provide guidance on understanding and using the different adoption forms.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
Since these recommendations are being presented to the council at its November meeting, the committee is recommending a delayed implementation date of July 1, 2025.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was
  ☒ reviewed by EGG on *(date)* 6/21/24; 8/20/24; 9/10/24
  ☒ approved by Office Director (or Designee) (*name*) Audrey Fancy

on (date) 9/20/24

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
  ☒ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☒ This proposal may require changes or additions to self-help web content.

Judicial Council *of* California

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on November 15, 2024

Title
Family Law: Adoption Forms

Rules, Forms, Standards, or Statutes Affected
Adopt form ADOPT-203; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, ADOPT-215, ADOPT-230, and ADOPT-310

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Tari L. Cody, Cochair
Hon. Stephanie E. Hulsey, Cochair

Agenda Item Type
Action Required

Effective Date
July 1, 2025

Date of Report
October 4, 2024

Contact
Kerry Doyle, Attorney
415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one new form and revising six forms to simplify, clarify, and provide additional guidance necessary during the adoption process for all adopting parents, and their counsel if represented. The committee further recommends revising the adoption request form to conform to Assembly Bill 1650 (Patterson; Stats. 2023, ch.76), which requires that the petitioner inform the court, in writing, whether the petitioner has entered, or has agreed to enter, into a postadoption contact agreement.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2025:

1. Adopt *Stepparent Adoption Request* (form ADOPT-203) as an adoption request form to be used only for stepparent adoptions and stepparent adoptions to confirm parentage;

2. Revise *How to Adopt a Child in California* (form ADOPT-050-INFO) to clarify the specific procedures necessary to finalize distinct types of adoptions, provide additional information and links to adoption resources available on the California Courts Self-Help Guide, and to reference the new separate form for stepparent adoptions;

3. Revise *Adoption Request* (form ADOPT-200) to remove items related solely to the stepparent adoption process and reconfigure the section on consents and termination of parental rights;

4. Revise *Adoption Agreement* (form ADOPT-210) to clarify where an adopting stepparent should sign this form and to include language for adopting parents' signatures added during a remote hearing;

5. Revise *Adoption Order* (form ADOPT-215) to include proper notification language and to clarify language pertaining to adoptions where a parent or parents maintain their parental rights;

6. Revise *Adoption Expenses* (form ADOPT-230) to add instructions regarding which costs should be listed and remove expense categories to allow filers to comply with Family Code section 8610, which requires the itemization of each payment, not each type of service; and

7. Revise *Contact After Adoption Agreement* (form ADOPT-310) to add language referring to all types of siblings who could potentially be a party to the agreement, and include instructions indicating that a copy of the agreement must be provided to all adult parties within 30 days.

The proposed new form and the revised forms are attached at pages 12–37.

Relevant Previous Council Action

The *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) were adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings.

Also in 1998, the Judicial Council adopted a rule of court and several forms, including what is now numbered as California Rules of Court, rule 5.451 and *Contact After Adoption Agreement* (form ADOPT-310) to implement procedures for "kinship" adoption agreements, which allowed for ongoing contact between adopted children and their birth relatives. All references to "kinship adoption agreement" were revised to "postadoption contact agreement" based on legislative changes in 2001. Forms ADOPT-200 and ADOPT-215 were revised in April 2001 to provide information on postadoption contact. Form ADOPT-310 was updated effective January 1, 2002, with a table employing icons to signify the type of postadoption contact agreed upon by the parties, and effective January 1, 2024, it was revised to correct an erroneous code citation and to reconfigure the table to facilitate accessibility for screen readers.

The council adopted the information sheet *How to Adopt a Child in California* (form ADOPT-050-INFO) in 1999 to provide basic information on the adoption process.

Form ADOPT-230 was adopted with the other adoption forms in 1998, but its original title was *Accounting Report—Adoptions*. By 2002, it had been renamed *Adoption Expenses.* The form has been revised multiple times to account for legislative changes and plain-language improvements and was last revised with an effective date of January 1, 2007.

Effective January 1, 2021, forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215 were revised in response to two important pieces of legislation affecting international adoptions and adoptions of children born to gestational surrogates in states that do not recognize both intended parents on the child's birth certificate.

Effective January 1, 2024, form ADOPT-050-INFO was revised to clarify the steps necessary for a stepparent adoption to confirm parentage, and *Adoption Request* (form ADOPT-200) was revised to respond to new legislation.

Analysis/Rationale

California law sets forth the procedures for four categories of adoptions. Within each category, there are subcategories of adoption types, each of which has unique requirements. They are as follows:

- Agency Adoptions (Fam. Code, § 8700 et seq.)
    - Nondependent child
    - Relative
    - Nonrelative
    - Dependent child or nonminor dependent
- Independent Adoptions (Fam. Code, § 8800 et seq.)
    - Relative
    - Nonrelative
- Intercountry Adoptions (Fam. Code, § 8900 et seq.)
    - International
    - Re-adoption of child adopted outside of the U.S.
- Stepparent Adoptions (Fam. Code, § 9000 et seq.)
    - Adoption of spouse/domestic partner's child
    - Adoption to confirm parentage (Fam. Code, § 9000.5)

Since the form was adopted in 1998, all four of these adoption types have been initiated using form ADOPT-200, *Adoption Request*. The committee now recommends the adoption of the new mandatory *Stepparent Adoption Request* (form ADOPT-203), to be used only for stepparent adoptions, including stepparent adoptions to confirm parentage. The committee further recommends removing all items that specifically reference the stepparent adoption process from form ADOPT-200. The committee further recommends revisions to the remainder of the

adoption forms to respond to concerns expressed by self-help attorneys, courts, and stakeholders.[1]

Assembly Bill 1650 (Patterson; Stats. 2023, ch.76) made several changes to the Family Code relating to custody, parentage, and adoption. Revisions to Family Code section 8616.5 require that the petitioner inform the court, in writing, whether a contact after adoption agreement has or will be entered. This section further requires that before the finalization of the adoption, the petitioner must file the agreement with the court and provide a file-marked copy of the form to all signatories of the agreement within 30 days of receipt of the filed-marked copy. These changes require minor changes to form ADOPT-310.

Proposed adoption of new form and form revisions

How to Adopt a Child in California **(form ADOPT-050-INFO)**
The current version of this information sheet lists the forms that need to be completed to start the adoption process and to prepare for the final hearing. The committee recommends adding information that helps an adoptive parent determine what type of adoption they are filing, what agency will be handing their home-study or investigation, and information that there may be additional forms and processes necessary based upon the participation of the parent who is not filing or joining in the adoption request.

The committee also recommends additional guidance and definitions within this form if the child may be of Native American ancestry.

The committee recommends revising the section pertaining to "Open" adoption to refer to the *Contact After Adoption Agreement* (form ADOPT-310). This section will now include the purpose and use of the form, when it should be filed (in accordance with the provisions of AB 1650), and who are or can be parties to this agreement.

Adoption Request **(form ADOPT-200)**
The committee recommends revising this form to remove all information related to the filing of a Stepparent Adoption; this information will be contained within the new form ADOPT-203. The committee also recommends significant changes to the items relating to consent and termination of parental rights. These questions have been replaced with an instruction box on page one of the form and an additional information box on page 4. There is also a reference to information to

[1] As part of the development of this proposal, the advisory committee sought the input of staff attorneys at court self-help centers, the Academy of California Adoption Lawyers (ACAL), court clerks, judicial officers beyond those on the committee, and the California Department of Social Services (CDSS). The self-help centers identified stepparent adoptions as both the most common adoption types for which they provide assistance and the ones having the most confusing processes for self-represented litigants. This proposal includes a new Stepparent *Adoption Request* (form ADOPT-203).

The self-help centers and court clerks also pointed out the numerous continuances required when self-help litigants arrived at court without the statutorily required pleadings and documents, depending on the status of the birth parent. The committee is proposing extensive changes to *How to Adopt a Child in California* (form ADOPT-050-INFO) to help inform self-represented litigants of all the necessary requirements to proceed with an adoption request.

consult the Judicial Council's Self-Help Guide to the California Courts, and that there may be additional paperwork necessary to proceed.

The committee also recommends revising the form so that the assertions made by the adopting parents are placed at the beginning of the form, and removing the names of birth parents as they are not required to be contained within the petition. These proposed changes may also eliminate misunderstandings about who qualifies as a person with parental rights, rather than referring to them as birth parents.

The committee recommends adding a question to item 12 to determine whether and when a *Contact After Adoption Agreement* (form ADOPT-310) will be filed. This language includes additional options that comply with Family Code section 8714.5 for dependent child agency adoptions and Welfare and Institutions Code section 16002 for contact between siblings, and that the form must be filed before the adoption hearing.

Stepparent Adoption Request **(form ADOPT-203)**
The committee recommends adopting this new form, which will only be used for stepparent adoptions, including those filed to confirm parentage. This will eliminate any confusion for the court, court clerk, or self-represented litigants since much of the information contained in the current version of form ADOPT-200 is not applicable to stepparent adoptions. This new form will only be used for stepparent adoptions, and all items pertain to stepparent adoption or to confirm parentage only.

Adoption Agreement **(form ADOPT-210)**
The committee recommends revising this form and adding language to clarify that the signature line at item 4, which is for one adopting parent, is also where a stepparent would sign the form. This will clarify where an adopting stepparent would sign this form. Also recommended are additional boxes and language under item 9 to allow for the signing of the form by adopting parents who appear remotely (in 9c) or outside of the hearing (in 9a).

Adoption Order **(form ADOPT-215)**
The committee recommends adding language within item 6 that includes the assertion that proper notice to all persons with actual or possible parental rights has been provided, and their voluntary or nonvoluntary participation is documented in the court file. This language was not contained in the prior form versions. The committee also recommends including language that allows the court to identify any persons with parental rights who agree to this adoption and who will maintain their existing parental rights, and who have executed an agreement waiving termination of parental rights. This language applies to all adoptions pursuant to Family Code section 8617(b) and which could be applicable for those adoptions with more than one additional parent, and would not apply to those situations where a person with parental rights either signed a consent to the adoption or where their parental rights were terminated.

Adoption Expenses **(form ADOPT-230)**
The committee recommends that item 3 of this form be revised to allow the adopting parent to write in all types of services provided as well as the ability to include more than one payee for a particular service. The existing form only allows one entry per service, such as attorney fees or medical care. The recommended form changes allow for the inclusion of many professionals who have provided the same service, such as different doctors, and more than one attorney. Typically, there are legal fees for the adoptive parent and separate legal fees for the birth mother or father. This will allow the adoptive parent to comply with Family Code section 8610 that requires the itemization of each payee, not just each type of service.

The committee also recommends that the instructions for item 3 include examples of the types of services that need to be listed, such as court filing fees, pregnancy expenses, and counseling.

Contact After Adoption Agreement **(form ADOPT-310)**
The committee recommends including language to describe the different types of siblings who may want to maintain contact and become a party to this agreement. This includes siblings who may be dependents and currently in foster care, or nonminor dependents who are over 18 years of age and continue in extended foster care. The committee also recommends including language to alert siblings that there is an additional form available through the California Department of Social Services (DSS) that can be signed by each sibling. It can be used in the event this agreement becomes unenforceable and the siblings want to maintain contact. The committee recommends including the website address and the DSS form numbers on this form.

The committee further recommends the addition of language on page 2 in the Notice box that provides instructions that the adopting parents must file this form before the adoption finalization hearing and that within 30 days of the filing of the form they must provide a file-marked copy to each person who signed the agreement and to any licensed adoption agency that placed the child for adoption or consented to the adoption.[2]

Relationship to Child Item
Adoption Request (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), *Adoption Order* (form ADOPT-215), and *Contact After Adoption Agreement* (form ADOPT-310) currently contain an item to specify "Relationship to Child." The committee recommends retaining this item on form ADOPT-200 only. The applicant's relationship to the child is relevant at the beginning stage of adoption proceedings because the judicial officer and—in some cases—the California Department of Social Services need to know this information to apply the correct legal standards and processes. For example, in an independent adoption, relatives can file a petition without birth parent consent;[3] in an agency adoption, relatives and some foster parents can have an abbreviated home study.[4]

[2] Fam. Code, § 8616.5(m)(2)(B).

[3] Fam. Code, § 8802.

[4] Fam. Code, § 8730.

When the applicant is signing the ADOPT-210 at the hearing to finalize the adoption, when the court is issuing the order of adoption on form ADOPT-215, and when parties are entering into post-adoption contact agreements on form ADOPT-310, the applicant is, or very soon will be, the child's parent and their prior relationship with the child is not as relevant at these stages. The committee thus recommends removing the item regarding the applicant's relationship to the child from these forms.[5]

Policy implications

This proposal responds to Judicial Branch Goal I: Access, Fairness, Diversity, and Inclusion; and Goal IV: Quality of Justice and Service to the Public. The committee is recommending a dedicated form for stepparent adoptions and stepparent adoptions to confirm parentage, as these are processes that are widely undertaken by self-represented adopting parents. The dedicated form will allow self-represented litigants to pursue these types of adoptions without having to sort through multiple requirements and additional forms that do not apply to this type of adoption. This will improve both access to the court process and the quality of the forms for the public seeking this type of adoption. In addition, the proposal responds to recent legislative changes in AB 1650. The committee's recommendations are designed to ensure that court rules, forms, and processes are consistent with the legislative requirements presented in the Family Code.

Comments

The proposal was circulated for comment from March 29 to May 3, 2024, and received comments from six commenters. Three commenters agreed with the proposals as written, two agreed if modified, and one did not indicate a position. Comments were received from four superior courts, a county bar association, and the Family Law Section of the California Lawyers Association. The comments were all supportive of the proposal and several commenters provided minor recommendations for revisions to the forms, most of which were accepted and incorporated into the proposal.

In addition to the comments discussed below, the substantive comments and feedback largely indicated that the implementation of the new *Stepparent Adoption Request* (form ADOPT-203) will greatly benefit litigants by providing them with a clear and distinct petition tailored to their circumstances. The proposal will also enhance clarity and efficiency in the adoption process, ultimately benefiting both litigants and court personnel.

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[5] Additionally, form ADOPT-210 is required for requests for stepparent adoptions to confirm parentage. Stepparents have a presumption of parentage under Family Code section 7611(a), so asking for the stepparent's relationship to the child on this form could lead to confusion. Since the applicant's relationship to the child is available elsewhere in the file, the committee concluded it would be preferable to remove this item rather than causing confusion by keeping it on the form.

A chart with the full text of the comments received and the committee's responses is attached at pages 38–52.

Additional Adopting Parents
The committee sought specific comment on whether there should be space on the request forms for more than two adoptive parents' names. Four of the six commenters replied to this question. One large court commented that there should be space for more than two parents. Another large court commented that they have not had a need for more space and when it is needed, petitioners put more than one name on the line. The Family Law Section of the California Lawyers Association commented that additional space could create confusion and that an addendum is used in practice. One large county bar association commented that there should be space for additional parents or reference to an attachment.

Based on comments received, the committee recommends including instructions to attach a sheet of paper to be used for any additional adopting parents at item 1 on *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Expenses* (form ADOPT-230); including a similar instruction on form ADOPT-210 at items 7 and 8; adding an additional signature line for adoptions where there are more than two adopting parents to forms ADOPT-200, ADOPT-210, and ADOPT-230; and adding the option for a third parent and an additional address to *Adoption Order* (form ADOPT-215) at item 1. The committee also made minor changes to the forms to ensure that references to singular or plural adopting parents were consistent.

The committee recommends including on the new *Stepparent Adoption Request* (form ADOPT-203), an instruction to file a separate ADOPT-203 form for any case where there is more than one stepparent that wants to adopt the child.

How to Adopt a Child in California **(form ADOPT-050-INFO)**
Comments received suggested (1) including directives to fill out the forms only in blue or black; (2) specifying the amount of the filing fee and how that is set; (3) rewording language on page 2, under the note after petition to terminate parental rights, to state: In some courts, this can be filed within the adoption case but in other courts it is a separate court action; and (4) that the adoptive parent or their legal representative should receive a copy of the filed forms and an instruction to complete form VS-44, a California Department of Social Services form used to produce the amended new birth certificate at the time of the final hearing.

Although the committee initially agreed to include language to complete the forms using blue or black ink only, the committee has now determined it may not be necessary. Upon review of the California Rules of Court, rule 2.106, which states that the font on papers presented for filing must be black or blue-black, as well as rule 2.118, which states that a clerk may not reject a filing that is in handwriting in a color other than black or blue-black, the committee has decided not to include the proposed language. The remainder of the above suggestions were accepted and incorporated into the revisions the committee is recommending.

Another commenter suggested that where the filing fee is mentioned within this document, to include language to alert the adoptive parents that a fee waiver may be sought. While the committee appreciates this suggestion, it is unclear whether this will create the need for an entirely separate paragraph within the form to include information, hyperlinks to the self-help website on when and how to file a request for a fee waiver—and the possibility of the additional opportunity to request fee waivers for court investigations—and other costs that may be associated with an adoption request. The committee carefully considered this request and included the actual filing fee for forms ADOPT-200 and ADOPT-203, and stated that the filing fee is set by the Health and Safety Code.

Adoption Request **(form ADOPT-200)**
As discussed above, in response to a request in the invitation to comment for input as to whether there should be space on the request forms for more than two adoptive parents' names, some commenters suggested including instructions to attach a sheet of paper to be used for any additional adoptive parents listed in item 1. A few typographical errors were also highlighted. All these suggestions and corrections were implemented.

Three commenters suggested leaving in the child's name after the adoption is finalized. One large court stated that they use the child's new name to initiate the case in its case management system, and another large court stated that the information is used by the court to refer to the child throughout the life of the case. One commenter did not state a reason for their suggestion.

The committee initially determined that the name the child will have after the adoption should not be included in form ADOPT-200 and that pursuant to relevant Family Code sections, the name is not required to be included. After careful consideration of the comments received about how some courts use the child's adoptive name for case management purposes, the committee determined that leaving the option of including the child's name after the adoption could be helpful, and therefore this information will remain in form ADOPT-200.

One comment suggested that the information regarding the birth parents' names not be removed from the form. The commenter explained that their court uses the names of the birth parents to verify court-received consents. The committee carefully considered this suggestion and determined that removing the names of the birth parents will reduce the possibility for confusion in instances where the listed individuals may not meet the statutory requirements of the term "birth parent," and thus would not be required to sign a consent or other documentation. Because the court receives supplemental information, such as reports and investigations, which identifies any persons who have or may have parental rights and what types of documentation or consents are necessary, the committee determined that there would be sufficient information in the file for the court to decide whether the court had received the appropriate consents.

The committee also reviewed the relevant family law statutory language regarding the information required to be provided within the requests for adoption—including Family Code sections 8802(d), 8714(d), 8912(b), and 9000(c)—which favors limiting information that can be contained within the caption and body of form ADOPT-200. Although the names of the birth

parents are not prohibited to be provided within the requests for adoption, their names are not required to be included.

The committee also included informational boxes within the request for adoption form as well as within form ADOPT-050-INFO to alert prospective adoptive parents of these possible birth parents or other determinations of those who may have parental rights. The form also includes hyperlinks to the Judicial Council's Self-Help Guide to the California Courts on parentage and adoption procedures.

A large court suggested that the committee consider leaving in the hearing box on the face of the adoption request. The commenter stated that their county completes this box at the time the adoption request is filed, and removing it will impact their adoption case initiation process in their juvenile court. The committee noted that before the distribution of the request for comment, it reached out to adoption professionals who indicated that the hearing is not typically set at the time of filing this form, except in some adult adoptions. The committee carefully reviewed the statutory requirements for information to be included in the requests for adoption either by the adoptive parents or the court, and there is no requirement that the information contained within the hearing box be included. However, the committee recommends leaving in the hearing box and any court that utilizes this hearing box information will be able to do so.

Adoption Order **(form ADOPT-215)**
The committee received a question, rather than a comment, which asked if the address of the adoptive parents is needed if the adoptive parents have an attorney representing them. While the committee appreciates this question, this question is outside the scope of the proposed changes and modifications during this review cycle. Additionally, such a change would require additional public comment and therefore the committee determined that it may seek to address this comment in a future proposal.

Alternatives considered

The committee considered not making any changes to the forms. However, the committee concluded that a separate form would assist parties, the courts, and self-help center staff by simplifying the process of a frequent adoption request and one that is often pursued by self-represented litigants. The commenters were supportive of a separate form for stepparent adoptions and stepparent adoptions to confirm parentage.

The committee also considered developing a new information sheet specific to stepparent adoptions, but instead added significant new material and clarifications to the current form ADOPT-050-INFO so that all the information would be contained on one form. The committee also considered adding information to form ADOPT-050-INFO regarding remote hearings to finalize adoptions but concluded that it would be too confusing to include information about remote hearings while also ensuring self-represented litigants bring the required documents to the court hearing when it is held in person.

Fiscal and Operational Impacts

Three commenters indicated that the proposal does not appear to provide any cost savings. Two commenters indicated that the proposal would require one-to-two or two-to-four hours of training for judicial officers and court staff.

The committee anticipates that this proposal will require courts to train court staff and judicial officers on the newly adopted and revised forms. Courts may also incur costs to incorporate the forms into the paper or electronic processes.

The committee received information from the self-help centers before this proposal, which alerted the committee that on a regular basis the self-help centers were required to assist self-represented litigants with their adoption requests and with additional documentation such as consents and termination of parental rights. This includes help in completing forms, making corrections, and follow-up after self-represented litigants' requests were denied or continued by the court for lack of sufficient documentation. The committee anticipates that a separate stepparent adoption form will alleviate many of the issues self-represented litigants face and lessen the workload of the self-help centers. The committee also anticipates that by including more information in form ADOPT-50-INFO about the necessary paperwork, the number of continuances granted to gather the correct paperwork will decline.

Since these recommendations are being presented to the council at its November meeting, the committee is recommending a delayed implementation date of July 1, 2025. This will give courts 7½ months to implement the new and revised forms.

Attachments and Links

1. Forms ADOPT-050-INFO, ADOPT-200, ADOPT-203, ADOPT-210, ADOPT-215, ADOPT-230, and ADOPT-310, at pages 12–37
2. Chart of comments, at pages 38–52
3. Link A: Assembly Bill 1650, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1650*

General Information on Adoptions

Before you begin

Seek legal advice about your family's options before beginning any adoption. Every family is different and adoption may not be necessary for some families. Visit the Self-Help Guide to the California Courts adoption page to get copies of adoption forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on your own if you do not have a lawyer: www.courts.ca.gov/selfhelp-adoption.htm.You can also get copies of adoption forms at your local court clerk's office.

What type of adoption will you be filing? In California there are several kinds of adoptions. This information sheet provides steps for the following types:

- Stepparent and domestic partnership
- Stepparent and domestic partnership confirmation of parentage
- Independent
- Agency (within the United States) and includes:
  - Agency placement or agency joinder
- Intercountry

For more information and definitions on these types of adoptions, see selfhelp.courts.ca.gov/adoptions.

What department or agency will be handling your home study or investigation?
In most adoptions, a home study or an investigation will be necessary.

- For independent adoptions
  - A regional office of the Department of Social Services (DSS).
  - An adoption agency.
  - For an independent adoption of a newborn, you must also choose an adoption services provider (ASP).

    The ASP is an individual or an adoption agency personnel licensed and certified by the State of California. The role of this person is to explain to the birth parent their rights in the adoption process (before "placing" the child with you), and will witness the signing of documents and consent.

    There is a listing of all providers who have been licensed as an ASP on the California Department of Social Services website. You can see the list by agency or the list by individual. The ASP will charge a fee. You must pay the fee as the adoptive parent.
  - For more information on a home study or ASP, see selfhelp.courts.ca.gov/independent-adoption/placed.
- For stepparent adoptions, the court investigator or a privately hired, licensed clinical social worker or other appropriate licensed individual will be handling your home study or investigation. See selfhelp.courts.ca.gov/stepparent-adoption.

If you need more information about what office or agency can conduct your home study, you can visit the California Department of Social Services website. Find out what paperwork they will need from you and when it must be sent to them once you file your *Adoption Request.*

Documents needed in addition to the *Adoption Request*

For most adoptions, the adopting parent, their legal representative, or the agency will be required to obtain additional signed forms or certified documents. These documents can include:

- Consent or relinquishment for adoption
- Death certificate (if applies)
- Other court orders
- Waiver of notice or denial of parentage

In certain situations additional court proceedings may be necessary. These may include:

- Petition freeing the child from parental custody and control and an order. (Note: This is a separate court action.)
- Petition to terminate parental rights of an alleged parent and an order. (Note: In some courts, this can be filed within the adoption case but in other courts it is a separate court action.)

Each of the above are specific procedures which must be followed based on the determination of the status of the parent. If this is an agency adoption, the agency will obtain the above information for the court.

This paperwork is needed to complete your adoption home-study or investigation.

The status of a parent is based on the relationship of that parent to the child and other factors. For definitions and more information about status of parent and what additional involvement or paperwork is needed, go to selfhelp.courts.ca.gov/adoptions.

Stepparent/Domestic Partner Adoptions

If you wish to adopt the child of your spouse or domestic partner, you may be eligible for a stepparent adoption. There are two types of stepparent adoptions. Answer these questions to figure out which process is right for you:

→ Were you in a union with the child's legal parent **at the time the child was born** and are you **still in a union** with the legal parent? (A "union" means a marriage, a California registered domestic partnership, or a registered domestic partnership or civil union from another state that is legally equivalent to a marriage.)

→ Did your **spouse or domestic partner give birth to the child** or was the child born through a **gestational surrogacy process** brought about by one or both of you?

If you answered no to **either** question, complete the items below for a **stepparent/domestic partner adoption**.

If you answered yes to **both** questions, complete the items below for a **stepparent adoption to confirm parentage**.

(1) Fill out court forms

• ADOPT-203	*Stepparent Adoption Request*	This tells the judge about you and the child you are adopting.
• ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
• ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
• ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
• ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

Additional Forms for Stepparent Adoption to Confirm Parentage

• ADOPT-205 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage. See above for more information on this type of adoption. Both the birth parent and the adopting parent must complete a separate declaration.
	-OR-	
• ADOPT-206 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage because the child was conceived through a gestational surrogate and was born outside of California, and the state where the child was born only allowed one intended parent to be named as a legal parent on the child's birth certificate.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a $20 filing fee (set by Health and Safety Code section 103730). Or take the forms to your lawyer or adoption agency, if you are using one. If there is no hearing, form ADOPT-210 must be signed in front of the court clerk or a notary.

Note: In a stepparent adoption to confirm parentage, no investigation or hearing is required unless ordered by the court for good cause. Sign form ADOPT-210 in front of a notary or the court clerk when you file the forms and a judge will review your request. If the paperwork is complete and you meet the requirements, the judge will sign the *Adoption Order* (form ADOPT-215) and the adoption is complete. You and your attorney will receive copies. If the judge orders an investigation and hearing, go to the next steps.

3 An investigation is completed

In most stepparent adoptions an investigation or a report must be completed before the final hearing. This will be completed by either someone you identified in the request or who was ordered by the court. To begin the investigation you will be required to send the *Adoption Request* and supporting documentation to the investigator. A home visit may also be required.

4 Go to court on the date of your hearing

Bring:
- The child you are adopting;
- Form ADOPT-210;
- Form ADOPT-215;
- A camera, if you want a photo of you and your child with the judge *(optional);* and
- Friends/relatives *(optional)*.
- California Department of Social Services form VS-44 may be needed (see selfhelp.courts.ca.gov/stepparent-adoption/prepare-lodge-forms).

Independent or Agency Adoptions in the United States

If this is an independent or agency adoption in the United States, complete items 1 through 4 below.
Note: The rights of the existing parents usually terminate with adoptions. In an independent adoption, if the existing and adopting parents agree, the rights of the existing parents do not have to be terminated. See Family Code section 8617(b).

1 Fill out court forms

• ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
• ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
• ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
• ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
• ICWA-010(A)*	*Indian Child Inquiry Attachment*	This lets the judge know that the required questions have been asked to determine whether the child may be an Indian child.
• ICWA-020*	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

*The agency or adoption service provider is responsible for getting these forms completed and making them part of the adoption file for adoptions under the Welfare and Institutions Code; other evidence, including court orders regarding ICWA may be necessary.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a $20.00 filing fee (set by Health and Safety Code section 103730). Or take the forms to your lawyer or adoption agency, if you are using one.

3 The social worker writes a report

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you and your attorney a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing

Bring:
- The child you are adopting;
- Form ADOPT-210;
- Form ADOPT-215;
- Form ADOPT-230;
- A camera, if you want a photo of you and your child with the judge *(optional);* and
- Friends/relatives *(optional)*.

Intercountry Adoptions

If this is an intercountry (international) adoption, complete items 1 through 6 below.
Note: You must follow this process to adopt your child under California law, even if the adoption was previously finalized in a foreign country. If the child's adoption was finalized in a foreign country, you must file the *Adoption Request* within the earlier of 60 days of the child's entry to the United States, or the child's 16th birthday.

1 Fill out court forms

• ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
• ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
• ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
• ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
• ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
• ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

2 Postadoption or postplacement visits and reports

If the child's adoption was finalized in a foreign country, there will be at least one postadoption visit provided by the international adoption agency. The report of this visit must be submitted to the court as described below. If the child was born in a foreign country and placed with a California family for adoption in this state, the adoption agency must provide postplacement supervision with up to four visits. These reports are also provided to the court.

3 Attach documentation

If the child's adoption was finalized in a foreign country, you must attach the following documents to your *Adoption Request*:

- A certified or otherwise official copy of the foreign decree, order, or certification of adoption that reflects finalization of the adoption in the foreign country;
- A certified or otherwise official copy of the child's foreign birth certificate;
- A certified translation of all required documents that are not written in English;
- Proof that the child was granted lawful entry into the United States as an immediate relative of the adoptive parent or parents;
- A report from at least one postplacement home visit by an intercountry adoption agency or a contractor of that agency licensed to provide intercountry adoption services in the state of California; and
- A copy of the home study report previously completed for the international finalized adoption by an adoption agency authorized to provide intercountry adoption services, in accordance with Family Code section 8900.

4 Take your forms to court

Take the completed forms and any required documents to the court clerk in the county where you live. The court will charge a $20.00 filing fee (set by Health and Safety Code section 103730). Or take the forms to your lawyer or adoption agency, if you are using one.

5 Provide a copy of the forms and documents

If the child's adoption was finalized in a foreign country, provide a copy of the forms and documentation you filed with the court to any adoption agency that provided services to you for your international adoption.

6 Go to court on the date of your hearing

Bring:
- The child you are adopting;
- Form ADOPT-210;
- Form ADOPT-215;
- Form ADOPT-230;
- A camera, if you want a photo of you and your child with the judge *(optional);* and
- Friends/relatives *(optional).*

Inquiry and Notice Under the Indian Child Welfare Act (ICWA)

☐ The child and other people in the child's life (parents and extended family members, see definition below) must be asked specific questions in order to determine whether the child may be an Indian child. The *Indian Child Inquiry Attachment* (form ICWA-010(A)) should be attached to the *Adoption Request*. In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and that the form is made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible. For more information about the duty of inquiry, see form ICWA-005-INFO.

☐ Extended family member is defined by law or custom of the Indian child's tribe or, if no law or custom, must be a person who is 18 years or older and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (25 U.S.C. § 1903(2)(2).)

☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) for each birth parent should be attached to the *Adoption Request*, OR it should be shown that a good faith attempt was made to provide the form to each birth parent, the Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court. In agency adoptions, it is the responsibility of the agency to ensure that this form is provided to the birth parents and made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

☐ If there is **reason to believe** that the child is or may be an Indian child, additional inquiry is required. For more information about the duty of inquiry, see form ICWA-005-INFO.

☐ If, at any time during the proceeding, there is **reason to know** that the child is an Indian child, notice must be provided of the adoption request to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030). This form must be served by registered or certified mail, with return receipt requested.

- Reason to know a child is an Indian child means that (1) a person having an interest in the child, including the child, informs the court the child is an Indian child; or (2) the child, the child's parents, or Indian custodian lives on a reservation or in an Alaska Native village; or (3) any person, tribe, or organization informs the court that it has discovered information indicating that the child is an Indian child. The court must proceed per rule 5.481(b)(3) of the California Rules of Court.

☐ If it is determined that the child **is an Indian child** or this is a tribal customary adoption, see Adoption of an Indian Child, below.

Adoption of an Indian Child

If you are adopting an Indian child, fill out and bring to court the following additional forms:

☐ *Adoption of Indian Child* (form ADOPT-220); and

☐ *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225).

If this is a tribal customary adoption, a copy of the tribal customary adoption order must be attached to the petition (form ADOPT-200) and the order (form ADOPT-215).

Note: An Indian child who has reached the age of 18 and who was placed for adoption, may apply to the court which entered the final order or decree. That court shall inform that child of their tribal affiliation, if any, of the child's biological parents and provide such other information as may be necessary to protect any rights flowing from the child's tribal relationship. [USC 25, Chpt.21,Section 1917]

"Open" Adoption and Use of *Contact After Adoption Agreement* (Family Code Section 8616.5)

If you want your child to have contact with their birth relatives after the adoption, you can use *Contact After Adoption Agreement* (form ADOPT-310). This form describes the kind of contact the birth relatives will have with your child after the adoption is finalized. If you use this form, fill it out and file this form with the court before the finalization hearing or order of the court. A file-marked copy of this agreement must be provided within 30 days of filing to all adult parties to this agreement and any licensed agency that placed the child or consented to the adoption, and the child, if over the age of 12.

Important: This is a voluntary agreement and is not required for the finalization of the adoption. If you chose to use this form, it will become part of the adoption file and will be enforceable by the court.

The adoptive parent or parents, the child, and the child's birth relatives can agree to continuing contact without using this form, but unless that agreement is in writing and attached to the *Contact After Adoption Agreement* (form ADOPT-310) it may not be enforced by the court if it is not followed.

Birth relatives are birth parents, siblings, and other birth relatives. For Indian children, this can also include the child's Indian tribe.

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-200.v30.092024.jh

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Instructions

This request must be completed for agency, independent, intercountry, and tribal customary adoptions. For a stepparent adoption or a stepparent adoption to confirm parentage, use Stepparent Adoption Request (form ADOPT-203). Fill out one adoption request for each child to be adopted.

You may also need to provide additional forms, certified documents, or other paperwork to inform the judge of the status of a parent or possible parent who may have parental rights in these proceedings and how that parent will or will not participate in these proceedings.

For more information on the different types of adoptions and how to determine the status of a parent and the documentation that may be required, see form ADOPT-050- INFO, selfhelp.courts.ca.gov/adoptions, or visit your local county court self-help center before filling out this form.

1 Adopting parent or parents

a. Name: _____

b. Name: _____

c. Street address: _____
City: _____ State: _____ Zip: _____
Telephone number: _____

d. Relationship to child: _____

e. Lawyer (if any) *(name, address, telephone numbers, email address, and State Bar number):* _____
_____
_____

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-200, Other Adoptive Parents" at the top and complete a–e. Turn it in with this form.

2 Hearing is set for:

(To be completed by the clerk of the superior court if a hearing date is available.)

Date: _____ Time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

Name and address of court if different from above: _____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

3 Each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);

b. Will treat the child as their own;

c. Will support and care for the child;

d. Has a suitable home for the child; *and*

e. Agrees to adopt the child.

4 County of filing

This *Adoption Request* is filed in this court because *(check all that apply):*

a. ☐ An adopting parent lives in this county;

b. ☐ The child was born in or the child now lives in this county;

c. ☐ An office of the agency that placed the child or is filing the request for adoption is located in this county;

d. ☐ An office of the department or public adoption agency that is investigating the request is located in this county;

e. ☐ A placing birth parent lived in this county when the adoptive placement agreement, consent, or relinquishment was signed;

f. ☐ A placing birth parent lived in this county when the request was filed;

g. ☐ The child was freed for adoption in this county.

(Note: If the child is a dependent of the court (in foster care), this *Adoption Request* must be filed in the county where the child was freed for adoption or the county where the adopting parent or parents reside. See Family Code sections 8714 and 8714.5). For more information on dependent children, selfhelp.courts.ca.gov/juvenile-dependency.

5 Type of adoption

Check one of the following:

a. ☐ Agency *(name):* _____ ☐ Relative ☐ Nonrelative
☐ Tribal customary adoption *(attach tribal customary adoption order)*

b. ☐ Independent: ☐ Relative ☐ Nonrelative ☐ Additional Parent (more than two)

c. ☐ Intercountry *(name of agency):* _____

6 Information about the child

a. Child's name before adoption (only for independent, intercountry, tribal customary adoption, or dependent child's adoption by a relative (Family Code, § 8714.5):
_____

b. Gender: ☐ Female ☐ Male ☐ Nonbinary

c. Date of birth: _____

d. Child's address (*if different from address of adopting parent or parents*):
Street: _____ City: _____ State: _____ Zip: _____

e. Place of birth (*if known*): City: _____ State: _____ Country: _____

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. Date child was placed in the physical care of the adopting parent or parents: _____

h. The child was conceived by assisted reproduction in compliance with Family Code section 7613. ☐ Yes ☐ No

i. The child is a dependent of the court. ☐ Yes ☐ No (If yes, add Juvenile Case No. and County)
Juvenile Case No. _____ County: _____

j. ☐ The child's new name will be: _____

7 Legal guardian

Does the child have a legal guardian? ☐ Yes ☐ No (If yes, attach *Letters of Guardianship* or fill out below.)

a. Date guardianship ordered: _____

b. County: _____

c. Case number: _____

8 Inquiry and notice under the Indian Child Welfare Act (ICWA)

a. ☐ The inquiry required under law to determine whether the child may be an Indian child has been made, and a completed *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
Note: In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and the form is made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible. For adoptions of a dependent child under the Welfare and Institutions Code, other evidence, including court orders regarding ICWA, may be necessary.

b. ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) is attached OR a good faith attempt has been made to provide the form to the parents, Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.
Note: In agency adoptions, it is the responsibility of the agency to ensure that these forms are made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

c. ☐ There is **reason to know** that this child is an Indian child. Notice of the adoption request will be provided to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

For more information on these requirements and for definitions, see form ADOPT-050-INFO.

9 Adoption of an Indian child

a. ☐ This is an adoption of an Indian child. The adopting parent or parents have filled out and attached *Adoption of Indian Child* (form ADOPT-220) and will bring *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) to the hearing.

b. ☐ This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

10 Agency adoption information

a. ☐ The adopting parent or parents have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that may be available.

b. ☐ Joinder is being filed at same time as this *Adoption Request*.

c. ☐ Joinder will be filed.

11 Independent adoption information

a. The adopting parent or parents will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

b. ☐ A copy of the *Independent Adoption Placement* Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Family Code section 8802.)

c. ☐ All persons with parental rights agree to the adoption and have signed the *Independent Adoptive Placement* Agreement or consent on the appropriate California Department of Social Services form.
(List the name and relationship to child of each person who has not signed the agreement form):
_____

d. ☐ The child will have more than two parents. The following persons with existing parental rights agree to this adoption and will maintain their existing parental rights:

(1) Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

(2) An agreement waiving termination of parental rights, signed by both the existing parents and the adopting parent or parents, was filed with the court.

Note: If a person who may have parental rights has not signed a consent or relinquishment, the adopting parent or parents must obtain other signed documents or file for termination of parental rights or other action.

12 Intercountry and California re-adoption questions

a. ☐ This adoption may be subject to the Hague Adoption Convention (*form* ADOPT-216 *may be required to be filed with this request. See Calif. Rules of Court 5.490-5.493*).

b. ☐ This is an adoption conducted under the requirements of the Hague Adoption Convention and the child has already moved with the adopting parent or parents to another Hague Convention member country or will be moving at the conclusion of this adoption.
Child will be moving or has moved to (name of country): _____
Adopting parent or parents: ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

c. ☐ This is an intercountry re-adoption. The adoption was finalized in another country before the child entered the United States with the adopting parent or parents.
Date the child entered the United States: _____
See form ADOPT-050-INFO for a list of documents to attach to this *Adoption Request*.

13 Contact after adoption (optional)

Contact After Adoption Agreement (form ADOPT-310) (Family Code, § 8616.5)

a. ☐ is attached.
b. ☐ is attached as required in Family Code section 8714.50 (dependent child agency adoption).
c. ☐ will be completed as required in Welfare and Institutions Code section 16002 between siblings and filed before the adoption hearing.
d. ☐ will be filed before the adoption hearing.
e. ☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

For more information, see form ADOPT-050-INFO.

Adopting parent or parents: _____ Case Number:

Additional Information Needed

If there are any other persons who are or may be the child's parent, you will be required to obtain additional forms, submit specified paperwork, and possibly participate in additional court proceedings. Other paperwork or additional court proceedings may be necessary. During the adoption process, you must provide additional documents to the court or the department or agency handling your home study. These documents can include:

- Consent or relinquishment for adoption–properly signed and accepted by court.
- Death certificates, prior court orders, or pending court orders.
- Waiver or denial of parentage–properly signed and accepted by court.

Additional court proceedings can include:

- Filing a petition and order freeing the child from parental custody and control. This is a separate action.
- Filing a petition and order terminating parental rights of an alleged father. This action can be filed within the adoption process.

Important: Seek the advice of an attorney. Refer to form ADOPT-050-INFO, see also https://selfhelp.courts.ca.gov/adoptions, or visit your local county court self-help center for more information.

14 Requests to court

a. ☐ The adopting parent or parents ask the court to approve the adoption and to declare that the adopting parent or parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

b. ☐ The adopting parent or parents ask the court to date its order approving the adoption as of an earlier *(date)*: _____ for the following reason (Family Code, § 8601.5):

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

c. ☐ This is a tribal customary adoption. The adopting parent or parents ask the court to approve the adoption and to declare that the adopting parent or parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

15 If a lawyer is representing you in this case, the lawyer must sign here:

Date: _____ _____ ▶ _____

Type or print lawyer's name *Signature of lawyer for adopting parent or parents*

16 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com,* or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

ADOPT-203 Stepparent Adoption Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-203.v23.092024.jh

Instructions

Use this form for a stepparent adoption or a stepparent adoption to confirm parentage. If you are adopting more than one child, fill out an adoption request for each child.

For more information on stepparent adoption and how to fill out this form, see form ADOPT-050-INFO and selfhelp.courts.ca.gov/stepparent-adoption.

If there are any other persons who are or may be the child's parent, you will be required to obtain additional forms, submit specified paperwork, and possibly participate in additional court proceedings. You will be required to provide all documentation to the court or the investigator during the adoption process.

For more information, see stepparent adoption in California selfhelp.courts.ca.gov/stepparent-adoption.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent

a. Name: _____

b. Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

c. Lawyer (if any) *(Name, State Bar number, address, telephone numbers, email):* _____

_____

☐ Check this box if there are more stepparents requesting adoption. They should file a separate *Stepparent Adoption Request* (form ADOPT-203).

2 Hearing is set for:

(To be completed by the clerk of the superior court if a hearing date is available.)

Date: _____ Time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

Name and address of court if different from above: _____

3 The adopting parent

a. Will treat the child as their own;

b. Will support and care for the child;

c. Has a suitable home for the child; *and*

d. Agrees to adopt the child.

4 County of filing

This *Stepparent Adoption Request* is filed in this court because *(check all that apply):*

a. ☐ The adopting parent lives in this county;

b. ☐ The child was born in or the child now lives in this county;

c. ☐ An office of the department or public adoption agency that is investigating the request is located in this county;

d. ☐ A placing birth parent lived in this county when the consent was signed;

4 e. ☐ A birth parent who will be retaining custody lived in this county when the request was filed;

f. ☐ The child was freed for adoption in this county.

5 **Type of stepparent adoption** ***(check all that apply):***

a. ☐ The adopting parent is married to or in a registered domestic partnership with the legal parent of a child the adopting parent is seeking to adopt. *(Attach proof of the marriage or domestic partnership.)*
The adopting parent married or entered into a registered domestic partnership with the legal parent on *(date)*: _____

(For court use only. There is no waiting period.)

b. ☐ The adopting parent is seeking a stepparent adoption to confirm parentage. At the time the child was born, the adopting parent was married to or in a state-registered domestic partnership with the parent who gave birth or whose parentage was established through a gestational surrogacy process, and we remain in that union. See attached:

(1) ☐ Form ADOPT-205, *Declaration Confirming Parentage in Stepparent Adoption*

(2) ☐ Form ADOPT-206, *Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*

(3) ☐ Declaration describing the circumstances of the child's conception.

c. ☐ The child will have more than two parents. The following persons with existing parental rights agree to this adoption and will maintain their existing parental rights:

(1) Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

(2) An agreement waiving termination of parental rights, signed by both the existing parents and the adopting parent or parents, was filed with the court.

Note: If a person who may have parental rights has not signed a consent or relinquishment, the adopting parent or parents must obtain other signed documents or file for termination of parental rights or other action.

6 **Information about the child**

a. Name before adoption: _____

b. Gender: ☐ Female ☐ Male ☐ Nonbinary

c. Date of birth: _____

d. Address *(if different from address of adopting parent)*
Street: _____ City: _____ State: _____ Zip: _____

e. Place of birth (*if known*): City: _____ State: _____ Country: _____

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

7 **Legal guardian**

Does the child have a court-ordered guardian appointed? ☐ Yes ☐ No
(If yes, attach *Letters of Guardianship* or fill out below.)

a. Date guardianship ordered: _____ b. County: _____ c. Case number: _____

8 **Inquiry and notice under the Indian Child Welfare Act**

a. ☐ The inquiry required under law to determine whether the child may be an Indian child has been made, and a completed *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

8 b. ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) is attached, OR a good faith attempt has been made to provide the form to the parents, Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.

c. ☐ There is **reason to know** that this child is an Indian child. Notice of the adoption request will be provided to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

9 Adoption of an Indian child

a. ☐ This is an adoption of an Indian child. The adopting parent has filled out and attached *Adoption of Indian Child* (form ADOPT-220) and will bring *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) to the hearing.

b. ☐ This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

10 Contact after adoption *(check any that apply):*

Contact After Adoption Agreement (form ADOPT-310)

a. ☐ is attached

b. ☐ will be filed before the final adoption hearing.

(For more information, see form ADOPT-050-INFO; Family Code section 8616.5)

11 Investigation or written report *(check one):*

The investigation or written report will be completed as follows:

a. ☐ I will choose someone to do an investigation or written report and will pay them directly. I understand that this person must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency.

b. ☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation.

c. ☐ This is an adoption to confirm parentage. No investigation is required unless court-ordered for good cause.

Additional Information Needed

If there are any other persons who are or may be the child's parent, you will be required to obtain additional forms, submit specified paperwork, and possibly participate in additional court proceedings. You must provide additional documents to the court or the investigator during the adoption process. These documents can include:

- Consent or relinquishment for adoption–properly signed and accepted by court.
- Death certificates, prior court orders, or pending court orders.
- Waiver or denial of parentage–properly signed and accepted by court.

Additional court proceedings can include:

- Filing a petition and order freeing the child from parental custody and control. This is a separate action.
- Filing a petition and order terminating parental rights of an alleged father. This action can be filed within the adoption process.

For more information, see: selfhelp.courts.ca.gov/stepparent-adoption.

12 **Requests to court**

a. ☐ I ask the court to approve the adoption and to declare that the adopting parent and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

b. ☐ I ask the court to date its order approving the adoption as of an earlier date *(date)*: _____ for the following reason (Family Code, § 8601.5):

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

13 If a lawyer is representing you in this case, the lawyer must sign here:

Date: _____ _____ ▶ _____

Type or print lawyer's name *Signature of lawyer for adopting parent*

14 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com*, or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

ADOPT-210 Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-210.v19.091924.am

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent or parents

a. Name: _____

b. Name: _____

c. Address *(skip this if you have a lawyer):* _____

City: _____ State: _____ Zip: _____

Telephone number: _____

d. Lawyer (if any) *(name, address, telephone numbers, e-mail address, and State Bar number):* _____

_____

_____

_____

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-210, Other Adopting Parents" at the top and complete a–d. Turn it in with this form.

2 Information about the child

Child's name before adoption: _____

Child's name after adoption: _____

Date of birth: _____ Age: _____

Signing this form:

- *Adoptions usually require a hearing where most signatures on this form must be completed in front of a judge.*
- *Item 5 may be signed before the hearing.*
- *If this is a stepparent adoption to confirm parentage involving a spouse or registered domestic partner who gave birth to the child or established parentage over a child born through gestational surrogacy during the union, usually no hearing is required and you may sign this form in front of a proper witness. See item 9a for instructions on having your signature properly witnessed. If the court orders a hearing in this case, you must sign this form at the hearing in front of the judge.*
- *All other signatures must be signed at a hearing, in front of a judge, unless waived by the judge for good cause.*

3

I am the child listed in 2 and I agree to the adoption. *(Not required in the case of a tribal customary adoption under Welf. & Inst. Code, § 366.24.)*

Date: _____ _____ ▶ _____

Type or print your name *Signature of child (child must sign if 12 or older; optional if child is under 12)*

4 *If there is **one** adopting parent (including stepparent), read and sign:*

I am the adopting parent listed in 1, and I agree that the child will:

a. Be adopted and treated as my legal child (Family Code, § 8612(b)) *and*

b. Have the same rights as a natural child born to me, including the right to inherit my estate.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

Adopting parent or parents: _____ **Case Number:**

5 *If the adopting parent is married and not separated, the consent of their spouse is required (Family Code, § 8603). Spouse must sign here:*

I am married to, or am the registered domestic partner of, the adopting parent listed in (1), and I am not a party to this adoption. I agree to the adoption of the child by the adopting parent listed in (1).

Date: _____ _____ ▶ _____

Type or print your name *Signature of spouse or registered domestic partner (may be signed before hearing)*

6 *For stepparent adoptions only:*
If you are the legal parent of the child listed in (2), read and sign below.

I am the legal parent of the child and am the spouse or registered domestic partner of the adopting parent listed in (1). I agree to the adoption of my child by the adopting parent listed in (1).

Date: _____ _____ ▶ _____

Type or print your name *Signature of legal parent*

7 *If there is more than one adopting parent, read and sign below.*

We are the adopting parents listed in (1), and we agree that the child will:

a. Be adopted and treated as our legal child (Family Code, § 8612(b)); and

b. Have the same rights as a natural child born to us, including the right to inherit our estate.

I agree to the other parent's or parents' adoption of the child.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

I agree to the other parent's or parents' adoption of the child.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

I agree to the other parent's or parents' adoption of the child.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-210, Item 7" at the top and include name, signature, and date signed. Turn it in with this form.

8 *If this is a tribal customary adoption, read and sign below.*

I or we are the adopting parents listed in (1), and I or we agree that the child will:

a. Be adopted and treated as my/our legal child (Family Code, § 8612(b)) and

b. Have the same rights and duties stated in the tribal customary adoption order dated _____ *(copy attached).*

Adopting parent or parents: _____ **Case Number:**

8 Date: _____ _____ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ _____
Type or print your name *Signature of adopting parent*

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-210, Item 8" at the top and include name, signature, and date signed. Turn it in with this form.

9 **Executed *(check one):***

a. ☐ This form was signed outside of a hearing. *(Select this option for either a stepparent adoption to confirm parentage under Family Code section 9000.5, where the court did not order a hearing for good cause, or if the court waived appearance under Family Code, section 8613 or 8613.5.)*

(1) ☐ This form was signed **in** California.
This form was signed in front of the following type of witness *(check one):*
- ☐ Notary public *(the notary acknowledgment is attached)*
- ☐ Court clerk
- ☐ Probation officer
- ☐ Qualified court investigator
- ☐ Authorized representative of a licensed adoption agency
- ☐ County welfare department staff member

(2) ☐ This form was signed **outside** of California.
This form was signed in front of the following type of witness *(check one):*
- ☐ Notary public *(the notary acknowledgment is attached)*
- ☐ Other person authorized to perform notarial acts *(proof of notarization is attached)*
- ☐ Authorized representative of an adoption agency that is licensed in the state or country where this form was signed

(3) Witness information

This form was signed in: *(county)* _____ *(state)* _____ *(country)* _____

Name of witness: _____

Agency witness works for *(if applicable):* _____

Date: _____

Witness signature: _____

b. ☐ This form was signed at a hearing in front of a judicial officer. *(The judge will date and sign the form below.)*

c. ☐ This form was signed by the adopting parent or parents either before or while the adopting parent or parents were attending a remote hearing and was acknowledged by the judicial officer. *(The judge will date and sign the form below.)*

Date: _____ _____
Judge or Judicial Officer

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-215.v19.092024.jh

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent or parents

a. Name: _____
b. Name: _____
c. Name: _____
d. Street address: _____
City: _____ State: _____ Zip: _____
Daytime telephone number: _____
e. Additional street address: _____
City: _____ State: _____ Zip: _____
Daytime telephone number: _____
f. Lawyer (if any) *(name, address, telephone number, email address, and State Bar number):* _____
_____
_____

2 Information about the child

Child's name after adoption:

a. First name: _____
b. Middle name: _____
c. Last name: _____
d. Date of birth: _____ Age: _____
e. Place of birth *(if known):* _____
City: _____ State: _____ Country: _____

3 Name of adoption agency *(if any):* _____

4 Hearing details

a. Hearing date: _____ Dept.: _____ Div.: _____ Rm.: _____
b. Judicial officer: _____ Clerk's office telephone number: _____
c. People present at the hearing:
☐ Adopting parent or parents ☐ Lawyer for adopting parent or parents
☐ Child ☐ Child's lawyer
☐ Parent or parents keeping parental rights: _____
☐ Other people present *(list each name and relationship to child):*
(1) _____
(2) _____
☐ *Check here if there are more names. Attach a sheet of paper, write "ADOPT-215, Item 4" at the top, and list the additional names and each person's relationship to child. You may use form MC-025,* Attachment.

4 d. ☐ The hearing is waived pursuant to Family Code section 9000.5 *(Check this box only if this is an adoption confirming parentage of a parent who was married to or in a state-registered domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, with the legal parent at the time the child was born.)*

Judge will fill out section below.

5 The judge finds that the child *(check all that apply):*

a. ☐ Is 12 or older and agrees to the adoption

b. ☐ Is under 12

c. ☐ Is not required to consent because this is a tribal customary adoption.

6 The judge has reviewed the report and other documents and evidence and finds that:

a. Proper notice to all persons with actual or possible parental rights has been provided and their voluntary or nonvoluntary participation is documented in the court file.

b. Each adopting parent:

(1) Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);

(2) Will treat the child as their own;

(3) Will support and care for the child;

(4) Has a suitable home for the child; *and*

(5) Agrees to adopt the child.

7 Child's name before adoption

Complete for nonrelative agency, independent, intercountry, or stepparent adoption.
If this is an adoption of a dependent child by a relative filed under Family Code section 8714.5, complete only if requested by the adopting relative or by the child being adopted, if 12 years of age or older.

First name:_____ Middle name:_____ Last name:_____

8 ☐ The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act or that there is good cause to give preference to these adopting parent or parents. The clerk will fill out 14 below.

9 ☐ The judge approves the *Contact After Adoption Agreement* (form ADOPT-310)

☐ As submitted ☐ As amended on form ADOPT-310

10 ☐ This is a tribal customary adoption. The tribal customary adoption order of the _____ tribe dated _____ containing ____ pages and attached hereto is fully incorporated into this order of adoption.

11 ☐ This is an adoption under the Hague Adoption Convention. *Verification of Compliance with Hague Adoption Convention Attachment* (form ADOPT-216) is attached and fully incorporated into this order.

12 ☐ *(Do not complete for intercountry adoptions.)* The child will have more than two parents. The following persons with existing parental rights agree to this adoption and will maintain their existing parental rights:

a. Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

b. An agreement waiving termination of parental rights, signed by both the existing parents and the adopting parent or parents, was filed with the court.

13 The judge believes the adoption is in the child's best interest and orders this adoption. The child's name after adoption will be:

First name: _____ Middle name: _____ Last name: _____

The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship or, in the case of a tribal customary adoption, all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code section 366.24.

☐ The judge believes it will serve public policy and the best interest of the child to grant the request of the adopting parent or parents for the court to make this order effective as of *(date):* _____.

Date: _____
(Date of Signature)

_____
Judge or Judicial Officer

Clerk will fill out section below.

14 Clerk's Certificate of Mailing

For the adoption of an Indian child, the clerk certifies:
I am not a party to this adoption. I placed a filed copy of:

☐ *Adoption Request* (form ADOPT-200) ☐ *Adoption of Indian Child* (form ADOPT-220)
☐ *Adoption Order* (form ADOPT-215) ☐ *Contact After Adoption Agreement* (form ADOPT-310)

in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
Bureau of Indian Affairs
1849 C Street, NW
Mail Stop 310-SIB
Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:

Place: _____ on *(date):* _____

Date: _____ Clerk, by: _____, Deputy

ADOPT-230 Adoption Expenses

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-230.v12.092024.jh

If you are adopting your stepchild, do not fill out this form.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number if known:

Case Number:

(1) a. Your name (adopting parent or parents):

(1) _____

(2) _____

b. Address *(skip this if you have a lawyer):*

Street: _____

City: _____ State: _____ Zip: _____

c. Telephone number: _____

d. Lawyer *(if any): (Name, address, telephone number, and State Bar number):* _____

_____

_____

_____

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-230, Other Adopting Parents" at the top and complete a–d. Turn it in with this form.

(2) Name of child after adoption:

_____

(3) *List services you received that were related to the adoption of the child listed in (2). Include all medical, hospital, attorney, legal fees and costs, doctors and physicians, surgeons, licensed adoption agency, or any other person or organization that received payment in connection with the birth of the child, expenses, and services received by either birth parent or by the child.* (Examples of other services provided: prenatal care, transportation, counseling, adoption service provider, pregnancy expenses, court filing fees, fingerprinting fees.)

	Service	Name and address of service provider	How much paid, or value of service	Payment date
a.	_____	_____	$ _____	_____
b.	_____	_____	$ _____	_____
c.	_____	_____	$ _____	_____
d.	_____	_____	$ _____	_____

Adopting parent or parents: _____ **Case Number:**

Service	Name and address of service provider	How much paid, or value of service	Payment date
e. _____	_____	$ _____	_____
f. _____	_____	$ _____	_____
g. _____	_____	$ _____	_____
h. _____	_____	$ _____	_____
i. _____	_____	$ _____	_____
j. _____	_____	$ _____	_____
k. _____	_____	$ _____	_____
l. _____	_____	$ _____	_____

☐ Check this box if you need more space to list the services related to this adoption. Use a separate piece of paper and write "ADOPT-230, Item 3—Payment for Services" at the top and include the service, name and address of provider, amount paid, and payment date. Turn it in with this form.

Number of pages attached: _____

4 I declare under penalty of perjury under the laws of the State of California that I have listed all payments (or anything of value) that I have paid or agreed to pay, or that were paid on my behalf, related to the child I want to adopt. I declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct, which means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

ADOPT-310 **Contact After Adoption Agreement**

☐ Original ☐ Change

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
ADOPT-310.v17.092024.jh

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent or parents:

a. Name: _____

b. Name: _____

c. Address *(skip this if you have a lawyer):* _____

City: _____ State: _____ Zip: _____

Telephone number: _____

d. Lawyer (if you have one) *(name, address, telephone numbers, e-mail address, and State Bar number):* _____

_____

_____

_____

☐ Check this box if there are more adopting parents. Use a separate piece of paper and write "ADOPT-310, Other Adopting Parents" at the top and complete a–d. Turn it in with this form.

2 Information about the child

a. Child's name (after adoption): _____

b. Date of birth: _____ Age: _____

c. Is the child a dependent of Juvenile Court? ☐ No ☐ Yes

If yes, list juvenile court and juvenile case number and attach this form to your *Adoption Request* (form ADOPT-200) (Family Code, §§ 8714.5(d) and 8715):

County: _____ Case number: _____

d. Child's Lawyer *(If the child has a lawyer, fill out below. If item 2c is yes, child must have a lawyer. See Family Code section 8616.5(d).)*

Name of child's lawyer: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone number: _____ State Bar number: _____

3 The birth relatives below agree with the requesting parties in **1** about contact with the child after adoption. *If the agreement is confidential, write "Confidential" instead of the person's name.* Sibling information may include minor siblings, siblings who are dependents or nonminor dependents, and adult siblings. Consider completion of waiver forms (California Department of Social Services forms AD 904A or AD 904B). See https://cdss.ca.gov/inforesources/forms-brochures/forms-alphabetic-list/a-d.

☐ Check this box if there are more relatives that need to sign. Use a separate piece of paper and write "ADOPT-310, Item 3—Other Relatives" at the top and include name, relationship to child, and type of contact. Turn it in with this form.

3

Name	Relationship to Child	Type of Contact *(check all that apply)*: Visits	Phone	Email	Letter	Share Info	Other*
a.		☐	☐	☐	☐	☐	☐
b.		☐	☐	☐	☐	☐	☐
c.		☐	☐	☐	☐	☐	☐
d.		☐	☐	☐	☐	☐	☐
e.		☐	☐	☐	☐	☐	☐
f.		☐	☐	☐	☐	☐	☐
g.		☐	☐	☐	☐	☐	☐

☐ Check this box if "Other" is selected. Use a separate piece of paper and write "ADOPT-310, Item 3 —Other Types of Contact" at the top and include name, relationship to child, and type of contact. Turn it in with this form.

4 ☐ Check this box if you have a signed, written agreement about Contact After Adoption, and attach a copy.

Number of pages attached: _____

5 The parties have discussed the reasons for continued contact between the child and the specified relatives or other parties, considering the best interests of the child.

Notice

1. **The adopting parent or parents must file this form with the court before the finalization hearing or order of the court. Within 30 days of the adopting parent or parents receiving a file-marked copy of this agreement, the adopting parent or parents must provide a file marked copy to each person who signed the agreement as well as any licensed adopting agency that placed the child for adoption or consented to the adoption.**
2. **After the judge signs the Adoption Order for this child, the adoption is final. It can never be canceled or changed, even if anyone who signed this agreement:**
   - **Does not follow the agreement, and/or**
   - **Files form ADOPT-315 (to change, end, or enforce this agreement).**
3. **Before this agreement can be changed by the court, all of the people who signed it have to try to fix any problems with it through a dispute resolution program, like mediation.**

6 *Everyone involved in this agreement must sign below (including the child, if 12 or older, and the child's attorney).*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

☐ Check this box if you need more space to list relatives. Use a separate piece of paper and write "ADOPT-310, Item 6 —Signatures of Other Relatives" at the top and include name and relationship to child, signature, and date signed. Turn it in with this form.

Date: _____ _____
Judge or Judicial Officer

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Family Law: Adoption Forms

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association The Executive Committee of the Family Law Section	A	FLEXCOM agrees with this proposal. As to the question posed regarding including room for the name of a third parent, FLEXCOM suggests it is not needed. It could create confusion in two-parent cases, and in cases where there are more than two parents an addendum is used in practice to note an additional parent.	The committee appreciates this feedback and has added language to include an attachment for additional adoptive parents on forms ADOPT-200, ADOPT 210, and ADOPT-230.
2.	Orange County Bar Association by Christina Zabat-Fran, President	A	YES, THERE SHOULD BE A SPACE OR REFERENCE TO AN ATTACHMENT TO INCLUDE ALL NAMES OF ALL ADOPTING PARENTS	The committee appreciates this feedback and has added language to include an attachment for additional adoptive parents on forms ADOPT-200, ADOPT 210, and ADOPT-230.
3.	Superior Court of California, County of Los Angeles by Bryan Borys, Director of Research and Data Management	A	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.	No response required.
			In response to the Judicial Council of California's "ITC SPR24-23 Family Law: Adoption Forms," the Court agrees with the proposal and its ability to appropriately address its stated purpose.	The committee appreciates this comment.
			The Court agrees that there should be space on the request forms for more than two adoptive parents' names.	The committee appreciates this feedback and has added language to include an attachment for additional adoptive parents on forms ADOPT-200, ADOPT 210, and ADOPT-230.
			Furthermore, the Court would like to provide a suggestion for the new ADOPT-203, item 1, to reflect Adopting Parents and have additional lines for up to two additional parents, as there are three-parent adoptions.	The committee agrees and has added language to include an attachment for additional adoptive parents on forms ADOPT-200, ADOPT 210, and ADOPT-230.

	Commenter	Position	Comment	Committee Response
			Although the Court does not see any cost savings from the proposal, it anticipates minimal implementation requirements, which include but are not limited to 1) Training for staff; 2) Updating policies and procedures; 3) Updating forms and event codes in the case management system.	The committee appreciates this comment.
			Lastly, the Court agrees that three months from Judicial Council approval of this proposal until its effective date will provide sufficient time for implementation and that this proposal would work well in courts of different sizes.	Since these recommendations are being presented to the council at its November meeting, the committee is recommending a delayed implementation date of July 1, 2025. This will give courts 7½ months to implement the new and revised forms.
4.	Superior Court of California, County of Orange by Katie Tobias, Operations Analyst, Family Law, and Juvenile Divisions	NI	Orange County utilizes the hearing box in the ADOPT-200 and completes the box at the time the adoption request is filed. Removing this box will impact the adoption case initiation process in juvenile.	The committee appreciates this feedback. While it had initially determined that the box may not be necessary as adoption hearings are typically not set at the time of filing the adoption request, the committee understands that keeping the hearing box within the document may be helpful to some courts and is recommending retaining the box.
			The removal of the current #4 on the ADOPT-200, Information about the child, specifically "section a. The child's new name will be:" is used for case initiation. First name and last initial of new name is used in creating the party in the case management system.	Although the committee initially determined that the box may not be necessary, after careful consideration of the comments, including this one, about how some courts use the child's adoptive name for case management purposes, the committee determined that leaving the option of including the child's name after the adoption could be helpful, and therefore this information is recommended to remain in the form ADOPT-200.

	Commenter	Position	Comment	Committee Response
			In addition, Orange County uses birth parent names to verify court-received consents for family law adoptions. Removing this will affect courtroom procedures for consent identification and verification.	The committee appreciates and considered this input but feels that removing the names of the birth parents on the form ADOPT-200 will reduce the possibility for confusion as to who needs to sign consents. Additionally, because there is follow-up information provided to the court, such as reports and investigations, those will identify the persons who have or may have parental rights and what types of documentation or consents are necessary. Also, inclusion of the birth parents' name is not required by the Family Code.
			Recommend modifying the language on Section 3 of the ADOPT-050-INFO form to state "The social worker will file the report with the court and send you or your attorney a copy." Also, within the Note on page 3 of the ADOPT-050-INFO form, the italicized form name "Adoption Order" does not include the form number. Recommend including the form number after the form name or replacing the form name with the form number for consistency.	The committee agrees with both comments and has revised the language to include "and your attorney" to Section 3 of the form ADOPT-050-INFO and has added "(form ADOPT-215)" after the form name on form ADOPT-050-INFO on page 3 within the Note.
			Recommend modifying the language on Section 9 of the ADOPT-210 form, checkbox c be revised to state "This form was signed by the judicial officer while the adopting parents or parent were attending a remote hearing."	The committee appreciates this feedback and has modified the proposed language to make it clearer that the purpose of checkbox c is to indicate that the adoptive parents signed a copy of the form while appearing remotely. The proposed revision reads: "This form was signed by the adopting parent or parents either before or while the adopting parent or parents were attending a remote hearing and was acknowledged by the judicial officer. *(The judicial officer will date and sign the form below).".*

	Commenter	Position	Comment	Committee Response
			On the ADOPT-215 form, Section 12 contains a possible error. Should this state "an additional parent", not "and addition parent"?	The committee appreciates this feedback and will make the correction to form ADOPT-215, item 12 to state: “additional.”
			Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates this feedback.
			Should there be space on the request forms for more than two adoptive parents’ names? Yes, there should be for more than two adoptive parents' names.	As indicated above, the committee agrees and has added language to include an attachment for additional adoptive parents.
			Would the proposal provide cost savings? If so, please quantify. No, the proposal does not appear to provide any cost savings.	The committee appreciates this comment.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation would require revising procedures, providing communication to judicial officers and staff, conducting staff training (approximately 1-2 hours), and updating the case management system.	The committee appreciates this information.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	Since these recommendations are being presented to the council at its November meeting, the committee is recommending a

	Commenter	Position	Comment	Committee Response
			Orange County would need six months to implement based off the requirements and potential changes to current juvenile procedures with the revision of the ADOPT-200 (see additional comments above).	delayed implementation date of July 1, 2025. This will give courts 7½ months to implement the new and revised forms.
			How well would this proposal work in courts of different sizes? Our court is a large court, and this could work for Orange County.	The committee appreciates this comment.
5.	Superior Court of California, County of Riverside	AM	Introducing a specific form for Stepparent Adoption Requests, such as the ADOPT-203, would greatly benefit litigants by providing them with a clear and distinct petition tailored to their circumstances. This specialization would enhance clarity and efficiency in the adoption process, ultimately benefiting both litigants and court personnel. Clear and understandable forms are crucial for ensuring accessibility and ease of use for all parties involved in the adoption process. The information contained in the information sheet provides the litigants with lots of information regarding the adoption process. This addition would further aid litigants in understanding the adoption process and their rights and responsibilities.	The committee appreciates this feedback and comment.
			ADOPT-050-INFO, Page 2 of 6, "Stepparent/Domestic Partner Adoptions" suggestion to number this as Section 1 with "Fill out court forms" as Subsection a. Add information that forms must be completed in black or blue ink	The committee appreciates and considered this feedback, but decided not to include the proposed language. Although California Rules of Court, rule 2.106 requires the font on papers presented for filing be black or blue-black, rule 2.118 states that a clerk may not reject a filing that is in

	Commenter	Position	Comment	Committee Response
				handwriting in a color other than black or blue-black. The committee recommends maintaining the current large font and bold text as identifying the sections with numbers for the subsections, rather than the suggested numbering of the sections and subsections. This is consistent with other Judicial Council plain language forms and improves readability.
			ADOPT-050-INFO, Page 3 of 6, Section 2, remove the word "small" from the phrase "small filing fee." The size of the fee is subjective to the individual(s) financial situation.	The committee appreciates this feedback and has removed the word "small" and included the following: The court will charge a $20.00 filing fee (set by Health and Safety Code section 103730).
			ADOPT-050-INFO, Page 3 of 6, Section 2, Note: does not indicate whether or not the party will receive copies from the court	The committee appreciates this feedback and has modified the form to include language that once the forms are filed with the Clerk, the adoptive parents and their attorney will receive filed copies.
			ADOPT-050-INFO, Page 3 of 6, "Independent or Agency Adoptions in the United States" suggestion to number this as Section 2, with "Fill out court forms" as subsection a. Add information that forms must be completed in black or blue ink	The committee appreciates and considered this feedback, but decided not to include the proposed language. Although California Rules of Court, rule 2.106 requires the font on papers presented for filing be black or blue-black, rule 2.118 states that a clerk may not reject a filing that is in handwriting in a color other than black or blue-black. The committee recommends maintaining the current large font and bold text as headings identifying the sections with numbers for the individual items, rather than the suggested

	Commenter	Position	Comment	Committee Response
				numbering of the sections and lettering of the items. This is consistent with other Judicial Council plain language forms and improves readability.
			ADOPT-050-INFO, where filing fees are mentioned, also mention Fee Waivers	The committee appreciates this feedback and has incorporated language to include the actual filing fee for the adoption request of $20 and additional language that the fee is set by Health and Safety Code section 103730.
			ADOPT-050-INFO, Page 4 of 6, item 6- "Go to court on the date of your hearing", this is a good place to let petitioner know to bring a VS-44 Court Report of Adoption with Items 1 and 2 completed.	The committee appreciates this suggestion. The following language will be added on page 3, item 4, under Stepparent/Domestic partner adoption: (last bullet) Completed and signed, California Department of Social Services form VS-44 The language is only added to the Stepparent Adoption section because it is the adoption type most often filed by self-represented persons who may not know that the form VS-44 is completed by the court clerk after the adoption finalization hearing and is needed to generate the child's new birth certificate.
			ADOPT-050-INFO, pages 5 and 6, the ICWA forms are in blue, suggesting a hyperlink, but there is no option to navigate to a hyperlink.	The committee appreciates this comment about hyperlinks. Once all updates are made to the text of the forms, the hyperlinks will be tested to ensure they are working properly.
			ADOPT-200-Adoption Request, Page 1 of 5, Instructions, the ADOPT forms are blue in the information section, suggesting a hyperlink, but there is no option to navigate to a hyperlink.	The committee appreciates this comment. Once all updates are made to the text of the forms, the hyperlinks will be tested to ensure they are working properly.

	Commenter	Position	Comment	Committee Response
			ADOPT-200-Adoption Request, Page 1 of 5, Section 1, subsection d, part of the underline is missing in the Relationship to Child.	The committee appreciates this comment and has made the correction.
			ADOPT-200-Adoption Request, Page 4 of 5, the ADOPT forms are blue in the information section, suggesting a hyperlink, but there is no option to navigate to a hyperlink.	The committee appreciates this comment. Once all updates are made to the text of the forms, the hyperlinks will be tested to ensure they are working properly.
			ADOPT-203 -Stepparent Adoption Request, page 1 of 4, Box, and text indicating the box is informational	The committee appreciates this suggestion and has added the word "Instructions" at the top of the text within the box on form ADOPT-203.
			ADOPT-203 -Stepparent Adoption Request, page 1 of 4, Box, convert the ADOPT forms to hyperlinks.	The committee appreciates this comment. Once all updates are made to the text of the forms, the hyperlinks will be tested to ensure they are working properly.
			ADOPT-203 -Stepparent Adoption Request, page 3 of 4, section 9 second box, move second box to a separate line so that all the text pertaining to that box appears under it.	The committee appreciates this comment and modified form ADOPT-203 to incorporate this suggestion. Note: This item number is now item 10 as the hearing box was reincorporated into the form ADOPT-203.
			ADOPT-215-Adoption Order, section 1, Does the address of the parents need to be filled out if they have a lawyer?	The committee appreciates this suggestion. Because this would be a substantive change to the proposal, the committee believes public comment should be sought before they are considered for adoption. The committee may seek to address this comment in a future proposal.
			ADOPT-215-Adoption Order, section 2 Information about the child. Having a line for "Child's name after adoption" and then separate lines for first, middle and last is often confusing to	The committee appreciates this suggestion and will remove the line after "Child's name after adoption" on form ADOPT-215, item 2 and will keep the remainder of that section.

	Commenter	Position	Comment	Committee Response
			staff. Can the first line "Child's name after adoption" be removed.	
			ADOPT-215-Adoption Order, section 12, there is a typo. It should read this is an adoption involving an additional parent.	The committee appreciates this feedback and will make the correction to form ADOPT-215, item 12 to state: "additional."
			ADOPT-310- Contact After Adoption Agreement, page 1 of 2, section 1, sub sections a and b, add an indication that this section should contain the "name"	The committee appreciates this suggestion and has updated form ADOPT-310 Contact After Adoption Agreement, page 1, item 1, caption to read: "Adopting parents' names"
			Does the proposal appropriately address the stated purpose? Yes, the creating of a separate Stepparent Adoption Request (ADOPT-203) will make the filing of stepparent adoptions simpler, the updates to the ADOPT-050-INFO, ADOPT-200, ADOPT-210, ADOPT-215, ADOPT-230, and the ADOPT-310 make these forms easier to follow and address a lot of common issues and questions.	The committee appreciates these comments regarding operational impacts of form changes on the courts.
			Should there be space on the request forms for more than two adoptive parent's names? Yes, this adjustment would accommodate various family structures and ensure inclusivity in the adoption process.	As indicated above, the committee agrees and has added language to include an attachment for additional adoptive parents.
			Would the proposal provide cost savings? If so, please quantify? There would be no cost savings.	The committee appreciates this comment.
			What would the implementation requirements be for courts-for example, training staff (please identify position and expected hours of training), revising processes and procedures (please	The committee appreciates this comment.

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All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			describe), changing docket codes in case management systems, or modifying case management systems? Additional training would be necessary for judges, court clerk's office, and courtroom staff (2-4 hours), new codes would need to be created in the case management system, desk procedures and training guides for adoptions would need to be modified.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	Since these recommendations are being presented to the council at its November meeting, the committee is recommending a delayed implementation date of July 1, 2025. This will give courts 7½ months to implement the new and revised forms.
			How well would this proposal work in courts of different sizes? The proposal should work for courts of all sizes.	The committee appreciates this comment.
6.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	AM	Q: Does the proposal appropriately address the state purpose? **A: Yes.**	The committee appreciates this feedback.
			Q: Should there be space on the request forms for more than two adoptive parents' names? **A: No, we have not had a need for this. In a rare case where we did, the petitioners could put more than one name on a line.**	The committee appreciates this comment.
			Q: Would the proposal provide cost savings? If so, please quantify. **A: No.**	The committee appreciates this feedback.

	Commenter	Position	Comment	Committee Response
			Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **A: Implementation will require training of staff, updates to the case management system and local packets, and revising internal procedures.**	The committee appreciates this feedback regarding implementation requirements for the courts.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **A: Yes.**	Since these recommendations are being presented to the council at its November meeting, the committee is recommending a delayed implementation date of July 1, 2025. This will give courts 7½ months to implement the new and revised forms.
			Q: How well would this proposal work in courts of different sizes? **A: This proposal should work well, regardless of the size of the court**.	The committee appreciates this feedback.
			ADOPT-050-INFO: Recommend verifying the link to the Self-Help Guide is accurate.	The committee appreciates this comment. Once all updates are made to the text of the forms, the hyperlinks will be tested to ensure they are working properly.
			Suggest capitalizing "Department of Social Services."	The committee appreciates this recommendation and will make the corrections to capitalize

	Commenter	Position	Comment	Committee Response
				Department of Social Services wherever it appears on form ADOPT-050-INFO
			Suggest changing "will witness" to "to witness" in role of ASP.	The committee appreciates this suggestion but prefers to retain the proposed language.
			Propose modifying the Note following petitions to terminate parental rights to state: "(Note: In some courts, this can be filed within the adoption case but in other courts it is a separate court action.)"	The committee considered this suggestion and will make the change as suggested.
			ADOPT-200: In Instructions box, suggest changing "filing" to "filling" in the last sentence.	The committee appreciates this comment and has made the suggested correction.
			Item 5: propose adding a place for child's name after adoption. Although not specified by statute, this is important information for the court, as it is the name by which the child is likely to be referred during the life of the case.	Although the committee initially determined that the box may not be necessary, after careful consideration of the comments, including this one, about how some courts use the child's adoptive name for case management purposes, the committee determined that leaving the option of including the child's name after the adoption could be helpful, and therefore this information is recommended to remain in the form ADOPT-200.
			Item 7: suggest changing "Welfare and Institutions Code adoptions" to "the adoption of a dependent child."	The committee appreciates this suggestion and modified Item 7 to include: "For adoptions of a dependent child under the Welfare and Institutions Code…"
			Item 11: Suggest removing readoption from title and 11c, as it is not necessary and leads to awkward "readoption adoption."	Item 11: The committee appreciates this suggestion and modified the wording to:

	Commenter	Position	Comment	Committee Response
				This is an intercountry re-adoption. The adoption was finalized in another country before the child entered the United States with the adopting parent."
			11a: ADOPT-126 is not required in every intercountry case (see CRC 5.490 – 5.493).	Item 11(a): The committee appreciates this comment and will change the wording to include: (ADOPT-126 may be required to be filed with this request. See Cal. Rules of Court 5.490-5.493)
			Item 12: 12b: suggest rewording.	Item 12(b): The committee appreciates this suggestion and changed the wording to include: is attached as required in Family Code section 8714.50 (dependent child agency adoption)
			12c: suggest rewording to: "filed before the adoption hearing."	12(c): The committee appreciates and incorporated this suggestion.
			Additional Information Needed box: The format of item 15 on the existing form is more helpful to the court, in that it gives information about the birth parents and what will be done about their rights. Perhaps a simplified version of what is on the existing form would be more appropriate.	Additional information needed box: The committee appreciates and considered this input but prefers to remove the names of the birth parents.
			Item 13: suggest referring to either "adopting parent" or "adopting parents" consistently.	Item 13: The committee appreciates this suggestion and will revise the form to consistently use adopting parents.
			ADOPT-203: Item 3:	

	Commenter	Position	Comment	Committee Response
			3a: suggest revising to: "lives" in this county.	Item 3(a): the committee has made the suggested revision.
			3c: Propose removing. Relinquishment generally only applies to agency adoptions and would not apply in a stepparent adoption.	Item 3(c): the committee has removed the word relinquishment.
			Item 4a: suggest changing "a child I am seeking to adopt" to "the child to be adopted."	Item 4a: The committee is retaining the circulated language as the active voice is preferred for plain language forms.
			Item 5: suggest adding a place for child's name after adoption.	Item 5: Although the committee initially determined that the box may not be necessary, after careful consideration of the comments, including this one, about how some courts use the child's adoptive name for case management purposes, the committee determined that leaving the option of including the child's name after the adoption could be helpful, and therefore this information is recommended to remain in the form ADOPT-200.
			Additional Information Needed box: Please see comment to form ADOPT-200.	Additional information needed box: The committee appreciates and considered this input but prefers to remove the names of the birth parents to reduce the chance of confusion as to who needs to sign consents.
			ADOPT-210: In the signing instructions on page 1, suggest changing 8a to 9a.	The committee agrees with this suggestion and has incorporated it into the revised proposed forms.

SPR 24-160

Family Law: Adoption Forms

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			ADOPT-215: Item 8: suggest changing reference to item 13 to item 14. Item 12: The revision to item 12 might introduce some ambiguity for stepparent adoptions. The existing version of item 12 was used only to add a new parent without affecting the rights of the existing parents. This new version makes it seem like it could or should be used in a stepparent adoption.	The committee appreciates and has incorporated the suggestion. The committee appreciates this recommendation and will add the following after the first sentence in item 12: (not used for stepparent adoptions).
			ADOPT-310: Suggest revising reference to Family Code §8714.30 as this section does not exist.	The committee appreciates the comment and has revised the form to read: Family Code section 8714.5(d) and 8715

Item number: 04

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 10/4/2024

Rules Committee action requested [Choose from the drop-down menu below]:
Submit to JC (without circulating for comment)

Title of proposal: Protective Order: Technical Changes

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Revise form DV-100

Committee or other entity submitting the proposal:
Judicial Council staff for the Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail)*: Frances Ho; 415-865-7662; frances.ho@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): October 26, 2023, amended February 9, 2024
Project description from annual agenda: Item 13. Rules and Forms: Miscellaneous Technical Changes. Develop rule and form changes as necessary to correct errors meeting the criteria of rule 10.22(d)(2): "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy…."

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
Revisions to form DV-100 were recently approved by the council on September 20, 2024, with an effective date of January 1, 2025. After approval, typographical errors were identified. Because this form is frequently used, staff recommends correcting the nonsubstantive errors out of cycle.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Additional Information for JC Staff

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was
  ☒ reviewed by EGG on *(date)* 10/1/2024
  ☒ approved by Office Director (or Designee) (*name*) Audrey Fancy
  on (date) 9/30/2024

If either of above not checked, explain why:

*Complete the following for all reports to be submitted to council (optional for ITCs)**:***

- **Form Translations** (check all that apply)
  This proposal:
  ☒ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any report with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

Judicial Council *of* California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-188
For business meeting on November 15, 2024

Title
Protective Order: Technical Changes

Rules, Forms, Standards, or Statutes Affected
Revise form DV-100

Recommended by
Judicial Council staff
Frances Ho, Attorney
Center for Families, Children & the Courts

Agenda Item Type
Action Required

Effective Date
January 1, 2025

Date of Report
October 1, 2024

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary

Judicial Council staff have noted minor errors in a domestic violence restraining order form and recommends revising the form to make nonsubstantive technical changes to improve accuracy and to avoid confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective January 1, 2025, revise *Request for Domestic Violence Restraining Order* (form DV-100) to:

- Replace "see page 12" with "see page 13" in the instruction box at the top of page 1;
- Replace "page 11 of 12" with "page 11 of 13" in the footer of page 11; and
- Revise the section on next steps at the bottom of page 13 to provide the correct form title for form CLETS-001.

The proposed revised form is attached at pages 3–15.

Relevant Previous Council Action

On September 20, 2024, the Judicial Council approved revisions to form DV-100 to implement new body armor prohibitions under Assembly Bill 92 (Stats. 2023, ch. 232). The approved revisions to form DV-100 are reflected in the attached draft of form DV-100 and take effect on January 1, 2025.

Analysis/Rationale

The changes to these forms are technical in nature and necessary to ensure the forms are accurate and up to date.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes involve nonsubstantive technical changes or corrections, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impacts on courts or litigants other than the costs of replacing outdated forms. In implementing the revised forms, courts will incur standard reproduction costs. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Form DV-100, at pages 3–15

DV-100 Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT (10.1.24)
Not approved by the Judicial Council

Instructions

To ask for a domestic violence restraining order, you will need to complete this form and other forms (see page 13 for list of forms). If this case includes sensitive information about a minor child (under 18 years old), see form DV-160-INFO, *Privacy Protection for a Minor (Person Under 18 Years Old),* for more information on how to protect the child's information.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Person Asking for Protection

a. **Your name:** _____

b. **Your age:** _____

c. ! **Address where you can receive court papers**

(This address will be used by the court and by the person in 2 to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

d. ! **Your contact information** *(optional)*

(The court could use this information to contact you. If you don't want the person in 2 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Fax: _____

Email Address: _____

e. **Your lawyer's information** *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Person You Want Protection From

a. **Full name**: _____

b. **Age** *(give estimate if you do not know exact age):* _____

c. **Date of birth** *(if known):* _____

d. **Gender**: ☐ M ☐ F ☐ Nonbinary

e. **Race**: _____

This is not a Court Order.

3 Your Relationship to the Person in 2

(If you do not have one of these relationships with the person in 2, do not complete the rest of this form. You may be eligible for another type of restraining order. Learn more at https://selfhelp.courts.ca.gov/restraining-orders.)

(Check all that apply)

a. ☐ We have a child or children together *(names of children):* _____

_____

b. ☐ We are married or registered domestic partners.

c. ☐ We used to be married or registered domestic partners.

d. ☐ We are dating or used to date.

e. ☐ We are or used to be engaged to be married.

f. ☐ We are related. The person in 2 is my *(check all that apply):*

- ☐ Parent, stepparent, or parent-in-law
- ☐ Child, stepchild, or legally adopted child
- ☐ Child's spouse
- ☐ Brother, sister, sibling, stepsibling, or sibling in-law
- ☐ Grandparent, step-grandparent, or grandparent-in-law
- ☐ Grandchild, step-grandchild, or grandchild-in-law

g. ☐ We live together or used to live together. *(If checked, answer question below):*

Have you lived together with the person in 2 as a family or household (more than just roommates)?

☐ Yes ☐ No (If no, you do not qualify for this kind of restraining order unless you checked one of the other relationships listed above.)

4 Other Restraining Orders and Court Cases

a. Are there any restraining orders currently in place **or** that have expired in the last six months (examples: Did the police give you a restraining order that lasts a few days? Do you have one from the criminal court?)

☐ No

☐ Yes *(If yes, give information below and attach a copy if you have one.)*

(1) *(date of order):* _____ *(date it expires):* _____

(2) *(date of order):* _____ *(date it expires):* _____

b. Are you involved in any other court case with the person in 2?

☐ No

☐ Yes *(If you know, list where the case was filed (city, state, or tribe), the year it was filed, and case number.)*

- ☐ Custody _____
- ☐ Divorce _____
- ☐ Juvenile *(child welfare or juvenile justice):* _____
- ☐ Guardianship _____
- ☐ Criminal _____
- ☐ Other *(what kind of case?):* _____

This is not a Court Order.

Case Number:

Describe Abuse

In this section, explain how the person in (2) has been abusive. The judge will use this information to decide your request. Listed below are some examples of what "abuse" means under the law. **It is not a complete list** of all examples of abuse. Give information on any incident that you believe was abusive.

- made repeated unwanted contact with you
- tracked, controlled, or blocked your movements
- kept you from getting food or basic needs
- isolated you from friends, family, or other support
- made threats based on actual or suspected immigration status
- made you do something by force, threat, or intimidation
- stopped you from accessing or earning money
- tried to control/interfere with your contraception, birth control, pregnancy, or access to health information
- harassed you
- hit, kicked, pushed, or bit you
- injured you or tried to
- threatened to hurt or kill you
- sexually abused you
- abused a pet or animal
- destroyed your property
- choked or strangled you
- abused your children

(5) Most Recent Abuse

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in (2) use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in (2) cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*

_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in (4).)*

f. Give more details about how the person in (2) was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.

_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in (2) abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:

_____
_____

This is not a Court Order.

6 Has the person in 2 abused you in a different way from the abuse you described in 5? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in 2 use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in 2 cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*
_____
_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in 4.)*

f. Give more details about how the person in 2 was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in 2 abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:
_____
_____

This is not a Court Order.

7 Is there other abuse by the person in 2 that you want the judge to know about? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in 2 use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in 2 cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*

_____

_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in 4.)*

f. Give more details about how the person in 2 was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

g. How often has the person in 2 abused you like this?

☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____

Give dates or estimates of when it happened, if known:

_____

_____

☐ **Check this box if you need more space to describe the abuse**. You can use form DV-101, *Description of Abuse*, and turn it in with this form. You can also use a separate sheet of paper, write "Describe Abuse" abuse at the top, and turn it in with this form.

This is not a Court Order.

Case Number:

8 Other Protected People

Do you want the restraining order to protect your children, family, or someone you live with?

a. ☐ No

b. ☐ Yes *(If yes, complete the section below):*

(1) Full name	Age	Relationship to you	Lives with you?
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

☐ Check this box if you need to list more people. Use a separate piece of paper and write "DV-100, Other Protected People" at the top. Turn it in with this form.

(2) Why do these people need protection?

9 Does person in 2 have firearms (guns), firearm parts, or ammunition?

(A firearm includes a handgun, rifle, shotgun, and assault weapon. A firearm part means a receiver or frame or any item that may be used as or easily turned into a receiver or frame. Ammunition includes bullets, shells, cartridges, and clips.)

a. ☐ I don't know

b. ☐ No

c. ☐ Yes *(If you have information, complete the section below.)*

Describe Firearms (Guns), Firearm Parts, or Ammunition	Number or Amount	Location, if known
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

This is not a Court Order.

Case Number:

Choose the Orders That You Want a Judge to Make

In this section, you will choose the orders you want a judge to make now. Every situation is different. Choose the orders that fit your situation.

Check all the orders that you want a judge to make (order).

10 ☐ Order to Not Abuse

I ask the judge to order the person in (2) to not do the following things to me or anyone listed in (8):
Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace. (For more information on what "disturbing the peace" means, read form DV-500-INFO, *Can A Domestic Violence Restraining Order Help Me?*)

11 ☐ No-Contact Order

I ask the judge to order the person in (2) to not contact me or anyone listed in (8).

12 ☐ Stay-Away Order

a. I ask the judge to order the person in (2) to stay away from *(check all that apply):*

- ☐ Me.
- ☐ My home.
- ☐ My job or workplace.
- ☐ My vehicle.
- ☐ My school.
- ☐ Each person in (8).
- ☐ My children's school or childcare.
- ☐ Other *(please explain):* _____

b. How far do you want the person to stay away from all the places you checked above?

☐ 100 yards (300 feet) ☐ Other *(give distance in yards):* _____

c. Do you and the person in (2) live together or live close to each other?

☐ No ☐ Yes *(If yes, check one):*

- ☐ Live together *(If you live together, you can ask that the person in (2) move out in (13).)*
- ☐ Live in the same building, but not in the same home
- ☐ Live in the same neighborhood
- ☐ Other *(please explain):* _____

d. Do you and the person in (2) have the same workplace or go to the same school?

☐ No ☐ Yes *(If yes, check all that apply):*

- ☐ Work together at *(name of company):* _____
- ☐ Go to the same school *(name of school):* _____
- ☐ Other *(please explain):* _____

This is not a Court Order.

13 ☐ Order to Move Out

a. I ask the judge to order the person in 2 to move out of the home, located at:
(Give address): _____

b. I have a right to live at this address because:

(Check all that apply)

- ☐ I own the home.
- ☐ My name is on the lease.
- ☐ I live at this address with my child(ren).
- ☐ I have lived at this address for _____ years, _____ months.
- ☐ I pay for some or all the rent or mortgage.
- ☐ Other *(please explain):* _____

14 ☐ Other Orders

(Describe any additional orders you want the judge to make to keep you, your children, or the people in 8 safe):

15 ☐ Child Custody and Visitation

(Check this box if you have a child with the person in 2 and want the judge to make or change a child custody or visitation order. **You must fill out form DV-105, *Request for Child Custody and Visitation Orders*, and attach it to this form.**)

Orders that you can request on form DV-105 include:

- Child custody
- Stop person in 2 from accessing your child's school or medical information
- No visits with your children
- Virtual visits with your children
- Supervised (monitored) visits with your children
- Unsupervised (unmonitored) visits with your children

This is not a Court Order.

16 ☐ Protect Animals

a. (You may ask the court to protect your animals, your children's animals, or the person in 2's animals.)

	Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color
(1)				
(2)				
(3)				
(4)				

b. I ask the judge to protect the animals listed above by ordering the person in 2 to:

(Check all that apply)

(1) ☐ Stay away from the animals by at least: ☐ 100 yards (300 feet) ☐ Other *(number of yards):* _____

(2) ☐ **Not** take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

(3) ☐ Give me sole possession, care, and control of the animals because *(check all that apply):*

☐ Person in 2 abuses the animals. ☐ I take care of these animals.
☐ I purchased these animals. ☐ Other *(please explain):* _____

17 ☐ Control of Property

a. I ask the judge to give **only me** temporary use, possession, and control of the property listed here *(describe):*

b. Explain why you want control of the property you listed:

18 ☐ Health and Other Insurance

I ask the judge to order the person in 2 to **not** make any changes to any insurance or other coverage for me, the person in 2, or our children, including not being allowed to cancel, cash, borrow against, transfer, dispose of, or change the beneficiaries for the insurance.

19 ☐ Record Communications

I ask the judge to allow me to record calls or communications the person in 2 makes to me, when those calls or communications violate this restraining order.

This is not a Court Order.

20 ☐ Property Restraint *(only if you are married or a registered domestic partner with the person in 2.)*

I ask the judge to order the person in 2 **not** to borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the person in 2 to notify me of any new or big expenses and to explain them to the court.

21 ☐ Extend my deadline to give notice to person in 2

(Usually, the judge will give you about two weeks to give notice, or to "serve" the person in 2 of your request. If you need more time to serve, the judge may be able to give you a few extra days.)

I ask the judge to give me more time to serve the person in 2 because *(explain why you need more time):*

_____

22 ☐ Pay Debts (Bills) Owed for Property

(If you want the person in 2 to pay any debts owed for property, list them and explain why. The amount can be for the entire bill or only a portion. Some examples include rent, mortgage, car payment, etc.)

a. I ask the judge to order the person in 2 to make these payments while the restraining order is in effect:

(1) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(2) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(3) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Explain why you want the person in 2 to pay the debts listed above:

_____

_____

_____

_____

b. **Special decision (finding) by the judge if you did not agree to the debt** *(optional)*

(If you did not agree to the debt or debts listed above, you can ask the judge to decide (find) that one or more debts was made without your permission and resulted from the person in 2's abuse. This may help you defend against the debt if you are sued in another case.)

Do you want the judge to make this special decision (finding)?

☐ No ☐ Yes *(If yes, answer the questions below.)*

(1) Which of the debts listed above resulted from the abuse? *(check all that apply):*

☐ a(1) ☐ a(2) ☐ a(3)

(2) Do you know how the person in 2 made the debt or debts?

☐ No ☐ Yes

(If yes, explain how the person in 2 made the debt or debts):

_____

_____

_____

This is not a Court Order.

Orders That You Want a Judge to Make at Your Court Date

Below is a list of orders that a judge cannot make right away but can make at your court date in a few weeks. The person in (2) must be notified of your court date before the judge can consider making any of the orders listed below. Check all the orders that you want the judge to make at your court date.

23 ☐ Pay Expenses Caused by the Abuse

I ask the judge to order the person in (2) to pay for things **caused directly** by the person in (2) (damaged property, medical care, counseling, temporary housing, etc.). Bring proof of these amounts to your court date.

Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____

24 ☐ Child Support *(this applies only if you have a minor child with the person in (2))*

(Check all that apply)

a. ☐ I do not have a child support order and I want one.
b. ☐ I have a child support order and I want it changed *(attach a copy if you have one)*.
c. ☐ I now receive or have applied for TANF, Welfare, or CalWORKS.

25 ☐ Spousal Support

(You must be married or a registered domestic partner with person in (2).)

I ask the judge to order the person in (2) to give me financial assistance.

26 ☐ Lawyer's Fees and Costs

I ask that the person in (2) pay for some or all of my lawyer's fees and costs. (If you ask for fees and costs and the court grants your restraining order, the court must award you fees and costs if the respondent can afford to pay.)

This is not a Court Order.

(27) ☐ Batterer Intervention Program

I ask the judge to order the person listed in (2) to go to a 52-week batterer intervention program.
(The goal of this program is to stop abuse. There are weekly classes on accountability, abuse effects, and gender roles. If ordered, the person in (2) has to show the judge that they enrolled and completed the program.)

(28) ☐ Transfer of Wireless Phone Account

(If the person in (2) holds the rights to your cell phone account, you can ask the judge to transfer your number or your child's number to you. This means you will be financially responsible for these accounts. If you want to have control over a mobile device, like a cell phone, make this request at (17).)

I ask the judge to order the wireless service provider to transfer the billing responsibility and rights to the wireless phone numbers listed below to me because the account currently belongs to the person in (2):

a. ☐ My number ☐ Number of child in my care (including area code): _____
b. ☐ My number ☐ Number of child in my care (including area code): _____
c. ☐ My number ☐ Number of child in my care (including area code): _____
d. ☐ My number ☐ Number of child in my care (including area code): _____

Automatic Orders if the Judge Grants Restraining Order

In this section are orders that the person in (2) would have to follow if the judge grants a restraining order.

(29) No Firearms (Guns), Firearm Parts, or Ammunition

- Cannot own, possess, or buy firearms (guns), firearm parts, and ammunition.
- Must turn in, sell, or store any firearms (guns), firearm parts, or ammunition that they have or control.

(30) No Body Armor

- Cannot own, possess, or buy body armor.
- Must relinquish any body armor in their possession.

(31) Cannot Look for Protected People

Cannot look for the address or location of any person protected by the restraining order, unless the court finds good cause not to make this order.

This is not a Court Order.

32 Additional Pages

If you used additional paper or forms, enter the number of extra pages attached to this form: _____

33 Your Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

34 Your Lawyer's Signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

❶ **You must complete at least three additional forms**:

- Form DV-110, *Temporary Restraining Order (only items 1, 2 and 3)*
- Form DV-109, *Notice of Court Hearing (only items 1 and 2)*
- Form CLETS-001, *Confidential Information for Law Enforcement*
- **If you are asking for child custody and visitation orders**, you must complete **form DV-105**, *Request for Child Custody and Visitation Orders*, and **form DV-140**, *Child Custody and Visitation Order*.

❷ Turn in your completed forms to the court. Find out when your forms will be ready for you.

❸ Once you get your forms back from the court, have someone "serve" a copy of all forms on the person in ②. The sheriff or marshal can do this for free. See form SER-001, *Request for Sheriff to Serve Court Papers*. Learn more about service at https://selfhelp.courts.ca.gov/sheriff-serves-your-request-restraining-order.

❹ If you are asking for child support or spousal support you must also complete form FL-150, *Income and Expense Declaration*. If you are only asking for child support, you may be eligible to fill out a simpler form, FL-155. Read form DV-570 to see if you are eligible. Turn in your completed form to the court before your court date. You must also have someone mail or personally deliver a copy to the person in ②.

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