

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Approve**

**RUPRO Meeting:** November 18, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Civil Jury Instructions: Approve Publication of Minor Revisions (Action Required)

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

*Staff contact (name, phone and e-mail):* Bruce Greenlee, Attorney, Legal Services 415-865-7698  
[bruce.greenlee@jud.ca.gov](mailto:bruce.greenlee@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*  
Approved by RUPRO: Maintaining and expanding CACI (the committee's ongoing project)  
Project description from annual agenda:

*If requesting July 1 or out of cycle, explain:*

Rules 2.1050(d) and 10.58(a) of the California Rules of Court require the advisory committee to update, amend, and add topics to CACI on a regular basis and to submit its recommendations to the council for approval. Jury instructions are currently revised twice a year, and more often if necessary. Release 29 is the secibd CACI release for 2016. Release 28 was approved on June 24, 2016.

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

In addition to recommending approval of 74 revised CACI instructions under the provisions of the guidelines adopted on December 19, 2006 regarding Jury Instructions Corrections and Technical and Minor Substantive Changes, the advisory committee also requests that RUPRO approve and submit to the Judicial Council 22 new and revised CACI instructions and verdict forms.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
November 1, 2016	Review and Approve Publication of Instructions With Minor Revisions, Effective December 16, 2016
To	Deadline
Members of the Rules and Projects Committee	N/A
From	Contact
Advisory Committee on Civil Jury Instructions Hon. Martin J. Tangeman, Chair	Bruce Greenlee, Attorney 415-865-7698 phone 415-865-4319 fax bruce.greenlee@jud.ca.gov
Subject	
Civil Jury Instructions: Instructions With Minor Revisions	

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#### **Executive Summary**

The Advisory Committee on Civil Jury Instructions has completed revisions and additions to the *Judicial Council of California Civil Jury Instructions (CACI)*. This report addresses 74 instructions that have only the types of revisions that the Judicial Council has given the Rules and Projects Committee (RUPRO) final authority to approve—primarily instructions with changes only to the Directions for Use or to the Sources and Authority.

#### **Recommendation**

The Advisory Committee on Civil Jury Instructions recommends that RUPRO, effective December 16, 2016, approve for publication 74 revised civil jury instructions, prepared by the advisory committee, that contain changes that do not require Judicial Council approval. On RUPRO's approval, these instructions will be officially published in the 2017 edition of the *Judicial Council of California Civil Jury Instructions*.

The 74 instructions presented for final RUPRO approval are attached at pages xx–xxx. The committee in a separate report requests that RUPRO recommend to the Judicial Council for adoption 209 new and revised instructions and verdict forms.

## Previous Council Action

At the October 20, 2006, Judicial Council meeting, the Judicial Council approved authority for RUPRO to:<sup>1</sup>

Review 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).

Under the implementing guidelines that RUPRO adopted on December 19, 2006, titled *Jury Instructions Corrections and Technical and Minor Substantive Changes*, RUPRO has final approval authority over the following:

- (a) Additions 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;<sup>2</sup>
- (c) Additions or changes to the Directions for Use;
- (d) Changes to instruction text that are nonsubstantive and unlikely to create controversy. A nonsubstantive change is one that does not affect or alter any fundamental legal basis of the instruction;
- (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.

## Rationale for Recommendation

The Task Force on Jury Instructions was appointed in 1997 on the recommendation of the Blue Ribbon Commission on Jury System Improvement. The mission of the task force was to draft comprehensive, legally accurate jury instructions that are readily understood by the average juror. In July 2003, the council approved its civil jury instructions for initial publication in September 2003. The Advisory Committee on Civil Jury Instructions is charged with maintaining and updating those instructions.<sup>3</sup>

## Overview of updates

Of the 74 revised instructions that are presented for final RUPRO approval:

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<sup>1</sup> 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.

<sup>2</sup> In light of the committee's 2014 decision to remove verbatim quotes of statutes, rules, and regulations, this category (b) is now mostly moot. It might still apply if a statute, rule, or regulation is revoked, or if subdivisions are renumbered.

<sup>3</sup> See Cal. Rules of Court, rules 2.1050(d), 10.58(a).

- 60 have revisions under category (a) above only (additional cases or statutes added to Sources and Authority);
- 12 have revisions under category (c) above only (revisions to the Directions for Use); and
- 2 fall under both categories (a) and (c) (additions or changes to Sources and Authority and Directions for Use).

### **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:

1. *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.
2. Each legal component of the instruction should be supported by authority, either statutory or case law.
3. Authority addressing the burden of proof should be included.
4. Authority addressing the respective roles of judge and jury (questions of law and questions of fact) should be included.
5. Only one case excerpt should be included for each legal point.
6. California Supreme Court authority should always be included, if available.
7. If no Supreme Court authority is available, the most recent California appellate court authority for a point should be included.
8. A United States Supreme Court case should be included on any point for which it is the controlling authority.
9. 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.
10. Other cases may be included if deemed particularly useful to the users.
11. 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.

The advisory committee has deleted material from the Sources and Authority that duplicates other material that is already included or is to be added.

### **Nonfinal cases and incomplete citations**

Only two cases included in this release are not yet final. These are *John Doe 2 v. Superior Court*,<sup>4</sup> included in *CACI* No. 1707, *Fact Versus Opinion*; and *Aldana v. Stillwagon*,<sup>5</sup> added to *CACI* Nos. 555, *Affirmative Defense—Statute of Limitations—Medical Malpractice—One-Year Limit*, and 556, *Affirmative Defense—Statute of Limitations—Medical Malpractice—Three-Year Limit*. Petitions for review have been filed in both cases. Should review be granted or still be pending on the date of RUPRO approval, the excerpts from the case will of course be removed from the instructions. The instructions, however, will remain in the release because all three also have new excerpts from other cases that are final.

<sup>4</sup> *John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300.

<sup>5</sup> *Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1.

Except for U.S. Supreme Court reports, all incomplete citations will be resolved before publication. Any temporary LEXIS citations will be replaced once the official citation is available.

### **Sources and Authority format cleanup**

*CACI* format for case entries to the Sources and Authority requires that they be in the form of directly quoted material from the case. In some of the series, this format was not uniformly observed initially, and some excerpts are in the form of a legal statement with a citation rather than a direct quotation. Where found in instructions otherwise included, these out-of-format excerpts have been converted to direct quotations.

*CACI* format also orders statutes, rules, and regulations first; then case excerpts; and then any other authorities, such as a Restatement excerpt. Excerpts that were out of order have been moved to the proper location.

### **Comments, Alternatives Considered, and Policy Implications**

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

Rules 2.1050 and 10.58 of the California Rules of Court 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 are necessary to ensure that the instructions remain clear, accurate, and complete.

### **Implementation Requirements, Costs, and Operational Impacts**

There are no implementation costs. To the contrary, under its publication agreement with the Judicial Council, the official publisher, LexisNexis, will print the 2017 edition and pay royalties to the council. The official publisher will also make the new edition available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the council will register the copyright in this work and will continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council will provide a broad public license for their noncommercial use and reproduction.

### **Attachments**

1. Full text of 74 instructions for final RUPRO approval, at pages x–xx

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## 114. Bench Conferences and Conferences in Chambers

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**From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.**

**I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.**

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*New December 2010*

### **Directions for Use**

This instruction is based on Model Instruction 1.~~18~~-17 of the federal Ninth Circuit Court of Appeals. It may be used to explain to the jury why there may be discussions at the bench that the jury will not be able to hear, and why sometimes the judge will call a recess for discussions outside of the presence of the jury.

### ***Secondary Sources***

[7 Witkin, California Procedure \(5th ed. 2008\) Trial, § 281](#)

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.77 (Matthew Bender)

1 California Trial Guide, Unit 4, *Pretrial Evidentiary Motions*, § 4.10[1] (Matthew Bender)

Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 2, *Public Access to Trials and Records*, 2.05

## 219. Expert Witness Testimony

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**During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.**

**You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:**

- a. The expert's training and experience;**
  - b. The facts the expert relied on; and**
  - c. The reasons for the expert's opinion.**
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*New September 2003*

### Directions for Use

This instruction should not be given for expert witness testimony on the standard of care in professional malpractice cases if the testimony is uncontradicted. Uncontradicted testimony of an expert witness on the standard of care in a professional malpractice case is conclusive. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 632-633 [85 Cal.Rptr.2d 386]; *Conservatorship of McKeown* (1994) 25 Cal.App.4th 502, 509 [30 Cal.Rptr.2d 542]; *Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 156 [65 Cal.Rptr. 406].) In all other cases, the jury may reject expert testimony, provided that the jury does not act arbitrarily. (*McKeown, supra*, 25 Cal.App.4th at p. 509.)

Do not use this instruction in eminent domain and inverse condemnation cases. (See *Aetna Life and Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 877 [216 Cal.Rptr. 831]; CACI No. 3515, *Valuation Testimony*.)

For an instruction on hypothetical questions, see CACI No. 220, *Experts—Questions Containing Assumed Facts*. For an instruction on conflicting expert testimony, see CACI No. 221, *Conflicting Expert Testimony*.

### Sources and Authority

- Qualification as Expert. Evidence Code section 720(a).
- “Under Evidence Code section 720, subdivision (a), a person is qualified to testify as an expert if he or she ‘has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates.’ ‘[T]he determinative issue in each case must be

whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the jury in the search for the truth ... [Citation.] Where a witness has disclosed sufficient knowledge, the question of the degree of knowledge goes more to the weight of the evidence than its admissibility. [Citation.]” (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 969 [191 Cal.Rptr.3d 766].)

- The “credibility of expert witnesses is a matter for the jury after proper instructions from the court.” (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1265 [226 Cal.Rptr. 306].)
- “[U]nder Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative. Other provisions of law, including decisional law, may also provide reasons for excluding expert opinion testimony. [¶] But courts must also be cautious in excluding expert testimony. The trial court's gatekeeping role does not involve choosing between competing expert opinions.” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771–772 [149 Cal.Rptr.3d 614, 288 P.3d 1237], footnote omitted.)
- “Generally, the opinion of an expert is admissible when it is “[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact ... .” [Citations.] Also, “[t]estimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.” [Citation.] However, “ ‘Where the jury is just as competent as the expert to consider and weigh the evidence and draw the necessary conclusions, then the need for expert testimony evaporates.’ ” Expert testimony will be excluded “ ‘when it would add nothing at all to the jury's common fund of information, i.e., when ‘the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness.’ ” ” (*Burton v. Sanner* (2012) 207 Cal.App.4th 12, 19 [142 Cal.Rptr.3d 782], internal citations omitted.)
- Under Evidence Code section 801(a), expert witness testimony “must relate to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.” (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 681, 692 [217 Cal.Rptr. 522].)
- Expert witnesses are qualified by special knowledge to form opinions on facts that they have not personally witnessed. (*Manney v. Housing Authority of The City of Richmond* (1947) 79 Cal.App.2d 453, 460 [180 P.2d 69].)
- “Although a jury may not arbitrarily or unreasonably disregard the testimony of an expert, it is not bound by the expert’s opinion. Instead, it must give to each opinion the weight which it finds the opinion deserves. So long as it does not do so arbitrarily, a jury may entirely reject the testimony of a plaintiff’s expert, even where the defendant does not call any opposing expert and the expert testimony is not contradicted.” (*Howard, supra*, 72 Cal.App.4th at p. 633, citations omitted.)

### Secondary Sources

| 1 Witkin, California Evidence (~~4th~~5th ed. ~~2000~~2012) Opinion Evidence, §§ 26–44

Jefferson, California Evidence Benchbook (3d ed. 1997) §§ 29.18–29.55

1 Levy et al., California Torts, Ch. 3, *Proof of Negligence*, § 3.04 (Matthew Bender)

3A California Trial Guide, Unit 60, *Opinion Testimony*, § 60.05 (Matthew Bender)

California Products Liability Actions, Ch. 4, *The Role of the Expert*, § 4.03 (Matthew Bender)

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, §§ 551.70, 551.113 (Matthew Bender)

## 221. Conflicting Expert Testimony

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**If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.**

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*New September 2003*

### Directions for Use

Unless the issue is one that can be resolved only with expert testimony, the jury should not be instructed that they must accept the entire testimony of the expert whose testimony appears to be entitled to greater weight. (*Santa Clara County Flood Control and Water Conservation Dist. v. Freitas* (1960) 177 Cal.App.2d 264, 268-269 [2 Cal.Rptr. 129].)

For an instruction on expert witnesses generally, see CACI No. 219, *Expert Witness Testimony*. For an instruction on hypothetical questions, see CACI No. 220, *Experts—Questions Containing Assumed Facts*.

### Sources and Authority

- ~~*Santa Clara County Flood Control and Water Conservation Dist., supra*, 177 Cal.App.2d at p. 268.~~
- ~~The “[C]redibility of expert witnesses is a matter for the jury after proper instructions from the court.” (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1265 [226 Cal.Rptr. 306].)~~
- “[W]e rely upon the rule of *Sargon* [*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 [149 Cal.Rptr.3d 614, 288 P.3d 1237] that although trial courts ‘have a substantial “gatekeeping” responsibility’ in evaluating proposed expert opinion, the gate tended is not a partisan checkpoint.” (*Davis v. Honeywell Internat. Inc.* (2016) 245 Cal.App.4th 477, 492 [199 Cal.Rptr.3d 583], internal citation omitted.)

### Secondary Sources

7 Witkin, California Procedure (4th-5th ed. 1997-2008) Trial, § 303.292

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.70 (Matthew Bender)

### 305. Implied-in-Fact Contract

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**In deciding whether a contract was created, you should consider the conduct and relationship of the parties as well as all the circumstances of the case.**

**Contracts can be created by the conduct of the parties, without spoken or written words. Contracts created by conduct are just as valid as contracts formed with words.**

**Conduct will create a contract if the conduct of both parties is intentional and each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract.**

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*New September 2003*

#### Sources and Authority

- Contract May Be Express or Implied. Civil Code section 1619.
- Express Contract. Civil Code section 1620.
- Implied Contract. Civil Code section 1621.
- “Unlike the ‘quasi-contractual’ quantum meruit theory which operates without an actual agreement of the parties, an implied-in-fact contract entails an actual contract, but one manifested in conduct rather than expressed in words.” (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 455 [78 Cal.Rptr.2d 101].)
- “An implied-in-fact contract is based on the conduct of the parties. Like an express contract, an implied-in-fact contract requires an ascertained agreement of the parties.” (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 636 [198 Cal.Rptr.3d 211], internal citation omitted.)
- Express and implied-in-fact contracts have the same legal effect, but differ in how they are proved at trial: “Contracts may be express or implied. These terms, however, do not denote different kinds of contracts, but have reference to the evidence by which the agreement between the parties is shown. If the agreement is shown by the direct words of the parties, spoken or written, the contract is said to be an express one. But if such agreement can only be shown by the acts and conduct of the parties, interpreted in the light of the subject-matter and of the surrounding circumstances, then the contract is an implied one.” (*Marvin v. Marvin* (1976) 18 Cal.3d 660, 678, fn. 16 [134 Cal.Rptr. 815, 557 P.2d 106], internal citation omitted.)
- “As to the basic elements [of a contract cause of action], there is no difference between an express and implied contract. ... While an implied in fact contract may be inferred from the conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise.” (*Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268,



275 [137 Cal.Rptr. 855]; see also *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 888 [24 Cal.Rptr.2d 892].)

- The formation of an implied contract can become an issue for the jury to decide: “Whether or not an implied contract has been created is determined by the acts and conduct of the parties and all the surrounding circumstances involved and is a question of fact.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 611 [176 Cal.Rptr. 824], internal citation omitted.)
- “Whether an implied contract exists ‘ ‘is usually a question of fact for the trial court. Where evidence is conflicting, or where reasonable conflicting inferences may be drawn from evidence which is not in conflict, a question of fact is presented for decision of the trial court. ...’ [Citation.]’ ” (*Unilab Corp, supra*, 244 Cal.App.4th at p. 636.)

### **Secondary Sources**

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 102

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, §§ 140.10, 140.110 (Matthew Bender)

1 Matthew Bender Practice Guide: California Contract Litigation, Ch. 13, *Attacking or Defending Existence of Contract—Absence of Essential Element*, 13.07

### 321. Existence of Condition Precedent Disputed

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[Name of defendant] **claims that the contract with [name of plaintiff] provides that [he/she/it] was not required to [insert duty] unless [insert condition precedent].**

[Name of defendant] **must prove that the parties agreed to this condition. If [name of defendant] proves this, then [name of plaintiff] must prove that [insert condition precedent].**

**If [name of plaintiff] does not prove that [insert condition precedent], then [name of defendant] was not required to [insert duty].**

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*New September 2003*

#### Directions for Use

This instruction should only be given if both the existence and the occurrence of a condition precedent are contested. If only the occurrence of a condition precedent is contested, use CACI No. 322, *Occurrence of Agreed Condition Precedent*.

#### Sources and Authority

- Conditional Obligation. Civil Code section 1434.
- Condition Precedent. Civil Code section 1436.
- “Under the law of contracts, parties may expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event.” (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313 [24 Cal.Rptr.2d 597, 862 P.2d 158].)
- “A conditional obligation is one in which ‘the rights or duties of any party thereto depend upon the occurrence of an uncertain event.’ ‘[P]arties may expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event.’ A condition in a contract may be a condition precedent, concurrent, or subsequent. ‘[A] condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises.’ ” (*JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 593 [198 Cal.Rptr.3d 47].) ~~A condition is a fact, the happening or nonhappening of which creates (condition precedent) or extinguishes (condition subsequent) a duty on the part of the promisor. If the promisor makes an absolute or unconditional promise, he is bound to perform when the time arrives; but if he makes a conditional promise, he binds himself to perform only if the condition precedent occurs, or is relieved from the duty if the condition subsequent occurs. The condition may be the happening of an event, or an act of a party.”~~<sup>22</sup> (1-Witkin, *Summary of California Law* (10th ed. 2005) *Contracts*, § 776.)
- “The existence of a condition precedent normally depends upon the intent of the parties as determined

from the words they have employed in the contract.” (*Karpinski v. Smitty's Bar, Inc.* (2016) 246 Cal.App.4th 456, 464 [201 Cal.Rptr.3d 148].)

- “[W]here defendant’s duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired.” (*Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 [11 Cal.Rptr.2d 524].)
- “When a contract establishes the satisfaction of one of the parties as a condition precedent, two tests are recognized: (1) The party is bound to make his decision according to the judicially discerned, objective standard of a reasonable person; (2) the party may make a subjective decision regardless of reasonableness, controlled only by the need for good faith. Which test applies in a given transaction is a matter of actual or judicially inferred intent. Absent an explicit contractual direction or one implied from the subject matter, the law prefers the objective, i.e., reasonable person, test.” (*Guntert v. City of Stockton* (1974) 43 Cal.App.3d 203, 209 [117 Cal.Rptr. 601], internal citations omitted.)
- “[T]he parol evidence rule does not apply to conditions precedent.” (*Karpinski, supra*, 246 Cal.App.4th at p. 464, fn 6.)

### **Secondary Sources**

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, §§ 780–791

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, §§ 140.44, 140.101 (Matthew Bender)

5 California Points and Authorities, Ch. 50, *Contracts*, §§ 50.20–50.22 (Matthew Bender)

27 California Legal Forms, Ch. 75, *Formation of Contracts and Standard Contractual Provisions*, § 75.230 (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 22, *Suing or Defending Action for Breach of Contract*, 22.19, 22.66

### 322. Occurrence of Agreed Condition Precedent

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**The parties agreed in their contract that [name of defendant] would not have to [insert duty] unless [insert condition precedent]. [Name of defendant] contends that this condition did not occur and that [he/she/it] did not have to [insert duty]. To overcome this contention, [name of plaintiff] must prove that [insert condition precedent].**

**If [name of plaintiff] does not prove that [insert condition precedent], then [name of defendant] was not required to [insert duty].**

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*New September 2003*

#### Directions for Use

Do not give this instruction unless the defendant has testified or offered other evidence in support of his or her contention.

If both the existence and the occurrence of a condition precedent are contested, use CACI No. 321, *Existence of Condition Precedent Disputed*.

#### Sources and Authority

- Conditional Obligation. Civil Code section 1434.
- Condition Precedent. Civil Code section 1436.
- “A conditional obligation is one in which ‘the rights or duties of any party thereto depend upon the occurrence of an uncertain event.’ ‘[P]arties may expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event.’ A condition in a contract may be a condition precedent, concurrent, or subsequent.” (*JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 593 [198 Cal.Rptr.3d 47].)
- “[A] ‘condition precedent’ is ‘either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises.’” (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1147 [180 Cal.Rptr.3d 683].)
- “Under the law of contracts, parties may expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event.” (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313 [24 Cal.Rptr.2d 597, 862 P.2d 158].)
- “The existence of a condition precedent normally depends upon the intent of the parties as determined from the words they have employed in the contract.” (*Karpinski v. Smitty's Bar, Inc.* (2016) 246

Cal.App.4th 456, 464 [201 Cal.Rptr.3d 148].)

- “ [G]enerally, a party's failure to perform a condition precedent will preclude an action for breach of contract.” ( *Stephens & Stephens XII, LLC, supra*, 231 Cal.App.4th at p. 1147.)
- ~~“A condition is a fact, the happening or nonhappening of which creates (condition precedent) or extinguishes (condition subsequent) a duty on the part of the promisor. If the promisor makes an absolute or unconditional promise, he is bound to perform when the time arrives; but if he makes a conditional promise, he binds himself to perform only if the condition precedent occurs, or is relieved from the duty if the condition subsequent occurs. The condition may be the happening of an event, or an act of a party.” (1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 776.)~~
- “[W]here defendant’s duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired.” ( *Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 [11 Cal.Rptr.2d 524].)
- “When a contract establishes the satisfaction of one of the parties as a condition precedent, two tests are recognized: (1) The party is bound to make his decision according to the judicially discerned, objective standard of a reasonable person; (2) the party may make a subjective decision regardless of reasonableness, controlled only by the need for good faith. Which test applies in a given transaction is a matter of actual or judicially inferred intent. Absent an explicit contractual direction or one implied from the subject matter, the law prefers the objective, i.e., reasonable person, test.” ( *Guntert v. City of Stockton* (1974) 43 Cal.App.3d 203, 209 [117 Cal.Rptr. 601], internal citations omitted.)
- “[T]he parol evidence rule does not apply to conditions precedent.” ( *Karpinski, supra*, 246 Cal.App.4th at p. 464, fn 6.)

### **Secondary Sources**

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, §§ 776–791

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, §§ 140.44, 140.101 (Matthew Bender)

5 California Points and Authorities, Ch. 50, *Contracts*, §§ 50.20–50.22 (Matthew Bender)

27 California Legal Forms, Ch. 75, *Formation of Contracts and Standard Contractual Provisions*, § 75.230 (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 22, *Suing or Defending Action for Breach of Contract*, 22.19, 22.66

**380. Agreement Formalized by Electronic Means—Uniform Electronic Transactions Act (Civ. Code, § 1633.1 et seq.)**

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**[Name of plaintiff] claims that the parties entered into a valid contract in which [some of] the required terms were supplied by [specify electronic means, e.g., e-mail messages]. If the parties agree, they may form a binding contract using an electronic record. An “electronic record” is one created, generated, sent, communicated, received, or stored by electronic means. [E.g., E-Mail] is an electronic record.**

**[Name of plaintiff] must prove, based on the context and surrounding circumstances, including the conduct of the parties, that the parties agreed to use [e.g., e-mail] to formalize their agreement.**

**[[Name of plaintiff] must have sent the contract documents to [name of defendant] in an electronic record capable of retention by [name of defendant] at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system limits or prohibits the ability of the recipient to print or store it.]**

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*New December 2012; Revised December 2016*

**Directions for Use**

This instruction is for use if the plaintiff is relying on the Uniform Electronic Transactions Act (UETA, Civ. Code, § 1633.1 et seq.) to prove contract formation. If there are other contested issues as to whether a contract was formed, also give CACI No. 303, *Breach of Contract—Essential Factual Elements*.

The first paragraph asserts that electronic means were used to supply some or all of the essential elements of the contract. Give the third paragraph if a law requires a person to provide, send, or deliver information in writing to another person. (See Civ. Code, § 1633.8(a).)

The most likely jury issue is whether the parties agreed to rely on electronic records to finalize their agreement. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. (See Civ. Code, § 1633.5(b).)

The UETA does not specify any particular transmissions that meet the definition of “electronic record,” such as e-mail or fax. (See Civ. Code, § 1633.2(g).) Nevertheless, there would seem to be little doubt that e-mail and fax meet the definition. The parties will probably stipulate accordingly, or the court may find that the particular transmission at issue meets the definition as a matter of law.

If a law requires a signature, an electronic signature satisfies the law. (Civ. Code, § 1633.7(d).) The UETA defines an electronic signature as an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (Civ. Code, § 1633.2(h); [see Gov. Code, § 16.5\(d\) \(digital signature\)](#).) The validity of an electronic signature under this definition would most likely be a question of law for the court. If there is an issue of fact with regard to the parties' intent to use electronic signatures, this instruction will need to be modified accordingly.

### Sources and Authority

- “Electronic Record” Defined Under UETA. Civil Code section 1633.2(g).
- “Electronic Signature” Defined Under UETA. Civil Code section 1633.2(h).
- Exclusions Under UETA. Civil Code section 1633.3(b).
- Agreement to Conduct Transaction by Electronic Means. Civil Code section 1633.5(b).
- Enforceability of Electronic Transactions. Civil Code section 1633.7.
- Providing Required Information by Electronic Means. Civil Code section 1633.8(a).
- Attributing Electronic Record or Signature to Person. Civil Code section 1633.9.
- “ ‘Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. ... ‘ The absence of an explicit agreement to conduct the transaction by electronic means is not determinative; however, it is a relevant factor to consider.’ ” (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 989 [182 Cal.Rptr.3d 154].)
- “Under Civil Code section 1633.7, enacted in 1999 as part of the Uniform Electronic Transactions Act, an electronic signature has the same legal effect as a handwritten signature.” (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 843 [181 Cal.Rptr.3d 781], internal citations omitted.)
- “Civil Code section 1633.9 addresses how a proponent of an electronic signature may authenticate the signature—that is, show the signature is, in fact, the signature of the person the proponent claims it is.” (*Ruiz, supra*, 232 Cal.App.4th at p. 843.)
- “We agree that a printed name or some other symbol might, under specific circumstances, be a signature under UETA ... .” (*J.B.B. Investment Partners, Ltd., supra*, 232 Cal.App.4th at p. 988.)
- “The trial court's analysis was incomplete. Attributing the name on an e-mail to a particular person and determining that the printed name is ‘[t]he act of [this] person’ is a necessary prerequisite but is insufficient, by itself, to establish that it is an ‘electronic signature.’ ... UETA defines the term ‘electronic signature.’ Subdivision (h) of section 1633.2 states that ‘ “[e]lectronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and *executed or adopted by a person with the intent to sign the electronic record.*’ (Italics added; see CACI No. 380 [party suing to enforce an agreement formalized by electronic means must prove ‘based on the context and surrounding circumstances, including the conduct of the parties, that the parties agreed to use [e.g., e-mail] to formalize their agreement ... ]’ ” (*J.B.B. Investment partners, supra*, 232 Cal.App.4th at pp. 988–989, original italics.)

- “In the face of [plaintiff]'s failure to recall electronically signing the 2011 agreement, the fact the 2011 agreement had an electronic signature on it in the name of [plaintiff], and a date and time stamp for the signature, was insufficient to support a finding that the electronic signature was, in fact, ‘the act of’ [plaintiff].” (*Ruiz, supra*, 232 Cal.App.4th at p. 844.)
- “[W]hether [defendant] 's printed name constituted an ‘electronic signature’ within the meaning of UETA or under the law of contract, are legal issues ... .” (*J.B.B. Investment Partners, Ltd., supra*, 232 Cal.App.4th at p. 984.)

### ***Secondary Sources***

7 Witkin, Summary of California Law (10th ed. 2005) Contracts § 11

1 Matthew Bender Practice Guide: California Contract Litigation, Ch. 15, *Attacking or Defending Existence of Contract—Failure to Comply With Applicable Formalities*, 15.32

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, § 140.26 (Matthew Bender)

27 California Legal Forms: Transaction Guide, Ch. 75, *Formation of Contracts and Standard Contractual Provisions*, § 75.17 (Matthew Bender)



#### 408. Primary Assumption of Risk—Liability of Coparticipant in Sport or Other Recreational Activity

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[Name of plaintiff] claims [he/she] was harmed while participating in [specify sport or other recreational activity, e.g., touch football] and that [name of defendant] is responsible for that harm. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] either intentionally injured [name of plaintiff] or acted so recklessly that [his/her] conduct was entirely outside the range of ordinary activity involved in [e.g., touch football];
2. That [name of plaintiff] was harmed; and
3. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.

Conduct is entirely outside the range of ordinary activity involved in [e.g., touch football] if that conduct can be prohibited without discouraging vigorous participation or otherwise fundamentally changing the [sport/activity].

[Name of defendant] is not responsible for an injury resulting from conduct that was merely accidental, careless, or negligent.

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*New September 2003; Revised April 2004, October 2008, April 2009, December 2011, December 2013*

#### Directions for Use

This instruction sets forth a plaintiff’s response to the affirmative defense of primary assumption of risk asserted by a defendant who was a coparticipant in the sport or other recreational activity. For an instruction applicable to coaches, instructors, or trainers, see CACI No. 409, *Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches*. For an instruction applicable to facilities owners and operators and to event sponsors, see CACI No. 410, *Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors*.

Primary assumption of risk generally absolves the defendant of a duty of care toward the plaintiff with regard to injury incurred in the course of a sporting or other recreational activity covered by the doctrine. (See *Knight v. Jewett* (1992) 3 Cal.4th 296, 320 [11 Cal.Rptr.2d 2, 834 P.2d 696].) Element 1 sets forth the exceptions in which there is a duty.

While duty is generally a question of law, there may be disputed facts that must be resolved by a jury before it can be determined if the doctrine applies. (See *Shin v. Ahn* (2007) 42 Cal.4th 482, 486 [64 Cal.Rptr.3d 803, 165 P.3d 581].)

### Sources and Authority

- “Primary assumption of risk arises where a plaintiff voluntarily participates in an activity or sport involving certain inherent risks; primary assumption of risk ... bar[s] recovery because no duty of care is owed as to such risks.” (*Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4th 8, 11 [45 Cal.Rptr.2d 855], internal citations omitted.)
- “Although the doctrine is often applied as between sports coparticipants, it defines the duty owed as between persons engaged in any activity involving inherent risks. The doctrine applies to activity ‘done for enjoyment or thrill, requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury’ ... .” (*Jimenez v. Roseville City School Dist.* (2016) 247 Cal.App.4th 594, 601 [202 Cal.Rptr.3d 536], internal citations omitted; see also *Bertsch v. Mammoth Community Water Dist.* (2016) 247 Cal.App.4th 1201, 1208 [202 Cal.Rptr.3d 757] [“These factors certainly apply to skateboarding.”])~~“[A]n activity falls within the meaning of “sport” if the activity is done for enjoyment or thrill, requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury.’”~~ (*Amezcuea v. Los Angeles Harley-Davidson, Inc.* (2011) 200 Cal.App.4th 217, 229 [132 Cal.Rptr.3d 567].)
- “A coparticipant in an active sport ordinarily bears no liability for an injury resulting from conduct in the course of the sport that is merely careless or negligent.” (*Ford v. Gouin* (1992) 3 Cal.4th 339, 342 [11 Cal.Rptr.2d 30, 834 P.2d 724].)
- “[W]e conclude that a participant in an active sport breaches a legal duty of care to other participants—i.e., engages in conduct that properly may subject him or her to financial liability—only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport.” (*Knight, supra*, 3 Cal.4th at p. 320.)
- “The *Knight* rule, however, ‘does not grant unbridled legal immunity to all defendants participating in sporting activity. The Supreme Court has stated that “it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport.” Thus, even though “defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself,” they may not increase the likelihood of injury above that which is inherent.’” (*Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1261 [102 Cal.Rptr.2d 813], internal citations omitted.)
- “In *Freeman v. Hale*, the Court of Appeal advanced a test ... for determining what risks are inherent in a sport: ‘[C]onduct is totally outside the range of ordinary activity involved in the sport (and thus any risks resulting from that conduct are not inherent to the sport) if the prohibition of that conduct would neither deter vigorous participation in the sport nor otherwise fundamentally alter the nature of the sport.’” (*Distefano, supra*, 85 Cal.App.4th at p. 1261.)
- “[G]olfers have a limited duty of care to other players, breached only if they intentionally injure them or engage in conduct that is ‘so reckless as to be totally outside the range of the ordinary activity involved in the sport.’” (*Shin, supra*, 42 Cal.4th at p. 497.)

- “[W]hether defendant breached the limited duty of care he owed other golfers by engaging in conduct that was ‘so reckless as to be totally outside the range of the ordinary activity involved in [golf]’ depends on resolution of disputed material facts. Thus, defendant’s summary judgment motion was properly denied.” (*Shin, supra*, 42 Cal.4th at p. 486, internal citation omitted.)
- “Although we recognize the Court of Appeal decisions specifically addressing the point are in conflict, we believe resolving this issue is not a matter of further defining [defendant]’s duty, which would be a question of law for the court. Rather, it requires application of the governing standard of care (the duty not to increase the risks inherent in the sport) to the facts of this particular case—the traditional role of the trier of fact. (See, e.g., *Vine v. Bear Valley Ski Co., supra*, 118 Cal.App.4th at pp. 591–592 [whether defendant’s design of snowboard jump increased inherent risks of snowboarding is question for jury]; *Solis v. Kirkwood Resort Co., supra*, 94 Cal.App.4th at p. 365 [whether artificial jumps built by resort increased inherent risk of falling while skiing is question for jury]; *Lowe v. California League of Prof. Baseball* (1997) 56 Cal.App.4th 112, 123 [65 Cal.Rptr.2d 105] [whether distraction caused by activities of minor league baseball team’s mascot increased inherent risk of spectator being hit by a foul ball ‘is issue of fact to be resolved at trial’]; but see *Huff v. Wilkins, supra*, 138 Cal.App.4th at p. 745 [‘it is the trial court’s province to determine whether defendants breached their duty not to increase the inherent risk of a collision [in the sport of off-roading], and it should hold a hearing for this purpose before impaneling a jury’]; *American Golf Corp. v. Superior Court* (2000) 79 Cal.App.4th 30, 37 [93 Cal.Rptr.2d 683] [‘[i]t is for the court to decide ... whether the defendant has increased the risks of the activity beyond the risks inherent in the sport’]; see also *Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 995, fn. 23 [101 Cal.Rptr.2d 325] [indicating it is for the court to determine whether defendant’s conduct increased the risk inherent in participating in a particular sport, but that trial court may receive expert testimony on the customary practices in the sport to make that determination].) [¶] Our conclusion it is for the trier of fact to determine whether [defendant] breached his limited duty not to increase the risks inherent in the sport of volleyball finds solid support in the Supreme Court’s most recent sports injury, primary assumption of the risk decision, *Shin v. Ahn, supra*, 42 Cal.4th 482, a case that postdates the appellate court decisions suggesting the issue is one for the court to resolve.” (*Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113 [86 Cal.Rptr.3d 588].)
- “The determinant of duty, ‘inherent risk,’ is to be decided solely as a question of law and based on the general characteristics of the sport activity and the parties’ relationship to it.” (*Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 501 [194 Cal.Rptr.3d 830].)
- “Admittedly, it is sometimes said that ‘[t]he existence and scope of a defendant’s duty of care in the primary assumption of risk context “is a legal question which depends on the nature of the sport or activity ... and on the parties’ general relationship to the activity, and is an issue to be decided by the court, rather than the jury.”’ This statement of the rule is correct where there is no dispute about the inherent risks, and such cases may be resolved on summary judgment. [¶] However this statement is overly broad. Although the risks inherent in many activities are not subject to reasonable dispute (e.g., being hit with a baseball during a game), the risks inherent in some activities are not commonly known. In such cases, expert testimony may be required ‘for purposes of weighing whether the inherent risks of the activity were increased by the defendant’s conduct.’ Thus, it is not entirely accurate to say inherent risks of an activity always present purely legal questions, because sometimes the nature of an activity and its risks must be gleaned from the evidence.” (*Jimenez, supra*, 247

Cal.App.4th at p. 608, original italics.)

- “[Plaintiff] has repeatedly argued that primary assumption of the risk does not apply because she did not impliedly consent to having a weight dropped on her head. However, a plaintiff’s expectation does not define the limits of primary assumption of the risk. ‘Primary assumption of risk focuses on the legal question of duty. It does not depend upon a plaintiff’s implied consent to injury, nor is the plaintiff’s subjective awareness or expectation relevant.’ ” (*Cann v. Stefanec* (2013) 217 Cal.App.4th 462, 471 [158 Cal.Rptr.3d 474].)
- “A jury could find that, by using a snowboard without the retention strap, in violation of the rules of the ski resort and a county ordinance, defendant unnecessarily increased the danger that his snowboard might escape his control and injure other participants such as plaintiff. The absence of a retention strap could therefore constitute conduct not inherent to the sport which increased the risk of injury.” (*Campbell v. Derylo* (1999) 75 Cal.App.4th 823, 829 [89 Cal.Rptr.2d 519].)
- “The existence and scope of a defendant’s duty depends on the role that defendant played in the activity. Defendants were merely the hosts of a social gathering at their cattle ranch, where [plaintiff] asked to ride one of their horses; they were not instructors and did not assume any of the responsibilities of an instructor.” (*Levinson v. Owens* (2009) 176 Cal.App.4th 1534, 1550–1551 [98 Cal.Rptr.3d 779], internal citation omitted.)
- “[T]he primary assumption of risk doctrine is not limited to activities classified as sports, but applies as well to other recreational activities ‘involving an inherent risk of injury to voluntary participants ... where the risk cannot be eliminated without altering the fundamental nature of the activity.’ ” (*Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1156 [150 Cal.Rptr.3d 551, 290 P.3d 1158].)
- “Whether a duty exists ‘does not turn on the reasonableness or unreasonableness of the plaintiff’s conduct, but rather on [(1)] the nature of the activity or sport in which the defendant is engaged and [(2)] the relationship of the defendant and the plaintiff to that activity or sport.’ It is the ‘nature of the activity’ and the parties’ relationship to it that determines whether the doctrine applies—not its characterization as a sporting event.” (*McGarry v. Sax* (2008) 158 Cal.App.4th 983, 999–1000 [70 Cal.Rptr.3d 519], internal citations omitted.)
- “[T]o the extent that “ ‘a plaintiff *unreasonably* undertakes to encounter a specific known risk imposed by a defendant’s negligence,’ ” he or she is subject to the defense of comparative negligence but not to an absolute defense. This type of comparative negligence has been referred to as “secondary assumption of risk.” Assumption of risk that is based upon the absence of a defendant’s duty of care is called “primary assumption of risk.” ‘First, in “primary assumption of risk” cases—where the defendant owes no duty to protect the plaintiff from a particular risk of harm—a plaintiff who has suffered such harm is not entitled to recover from the defendant, whether the plaintiff’s conduct in undertaking the activity was *reasonable* or *unreasonable*. Second, in “secondary assumption of risk” cases—involving instances in which the defendant has breached the duty of care owed to the plaintiff—the defendant is not entitled to be entirely relieved of liability for an injury proximately caused by such breach, simply because the plaintiff’s conduct in encountering the risk of such an injury was reasonable rather than unreasonable.’ ” (*Kindrich v. Long Beach Yacht Club* (2008) 167 Cal.App.4th 1252, 1259 [84 Cal.Rptr.3d 824], original italics, internal citations

omitted.)

- “Even were we to conclude that [plaintiff]’s decision to jump off the boat was a voluntary one, and that therefore he assumed a risk inherent in doing so, this is not enough to provide a complete defense. Because voluntary assumption of risk as a complete defense in a negligence action was abandoned in *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 829 [119 Cal.Rptr. 858, 532 P.2d 1226], only the absence of duty owed a plaintiff under the doctrine of primary assumption of risk would provide such a defense. But that doctrine does not come into play except when a plaintiff and a defendant are engaged in certain types of activities, such as an ‘active sport.’ That was not the case here; plaintiff was merely the passenger on a boat. Under *Li*, he may have been contributorily negligent but this would only go to reduce the amount of damages to which he is entitled.” (*Kindrich, supra*, 167 Cal.App.4th at p. 1258.)
- “Though most cases in which the doctrine of primary assumption of risk exists involve recreational sports, the doctrine has been applied to dangerous activities in other contexts (see, e.g., *Saville v. Sierra College* (2005) 133 Cal.App.4th 857 [36 Cal.Rptr.3d 515] [training in peace officer takedown maneuvers]; *Hamilton v. Martinelli & Associates* (2003) 110 Cal.App.4th 1012 [2 Cal.Rptr.3d 168] [training on physical restraint methods]; *Aaris v. Las Virgenes Unified School Dist.* (1998) 64 Cal.App.4th 1112 [75 Cal.Rptr.2d 801] [practice of cheerleader routines]; *Bushnell [v. Japanese-American Religious & Cultural Center]*, 43 Cal.App.4th 525 [50 Cal.Rptr.2d 671] [practice of moves in judo class]; and *Herrle v. Estate of Marshall* (1996) 45 Cal.App.4th 1761 [53 Cal.Rptr.2d 713] [injury to nurse's aide by nursing home patient]).” (*McGarry, supra*, 158 Cal.App.4th at pp. 999–1000, internal citation omitted.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1339, 1340, 1343–1350

1 Levy et al., California Torts, Ch. 4, *Comparative Negligence, Assumption of the Risk, and Related Defenses*, § 4.03, Ch. 15, *General Premises Liability*, § 15.21 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 273, *Games, Sports, and Athletics*, § 273.30 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.172 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.401 (Matthew Bender)

**409. Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches**

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[Name of plaintiff] claims [he/she] was harmed by [name of defendant]’s [coaching/training/instruction]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] was [name of plaintiff]’s [coach/trainer/instructor];
2. [That [name of defendant] intended to cause [name of plaintiff] injury or acted recklessly in that [his/her] conduct was entirely outside the range of ordinary activity involved in teaching or coaching [sport or other recreational activity, e.g., horseback riding] in which [name of plaintiff] was participating;]

[or]

[That [name of defendant] unreasonably increased the risks to [name of plaintiff] over and above those inherent in [e.g., horseback riding];]

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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*New September 2003; Revised April 2004, June 2012, December 2013*

**Directions for Use**

This instruction sets forth a plaintiff’s response to a defendant’s assertion of the affirmative defense of primary assumption of risk. Primary assumption of risk generally absolves the defendant of a duty of care toward the plaintiff with regard to injury incurred in the course of a sporting or other recreational activity covered by the doctrine. (See *Knight v. Jewett* (1992) 3 Cal.4th 296, 320 [11 Cal.Rptr.2d 2, 834 P.2d 696].)

There are exceptions, however, in which there is a duty of care. Use the first option for element 2 if it is alleged that the coach or trainer intended to cause the student’s injury or engaged in conduct totally outside the range of the ordinary activity involved in teaching or coaching the sport or activity. Use the second option if it is alleged that the coach’s or trainer’s failure to use ordinary care increased the risk of injury to the plaintiff, for example, by encouraging or allowing him or her to participate in the sport or activity when he or she was physically unfit to participate or by allowing the plaintiff to use unsafe equipment or instruments. (See *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 845 [120 Cal.Rptr.3d 90].) If the second option is selected, also give CACI No. 400, *Negligence—Essential Factual Elements*.

While duty is a question of law, courts have held that whether the defendant has unreasonably increased the risk is a question of fact for the jury. (See *Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113 [86

Cal.Rptr.3d 588] [and cases cited therein].) There may also be disputed facts that must be resolved by a jury before it can be determined if the doctrine applies. (See *Shin v. Ahn* (2007) 42 Cal.4th 482, 486 [64 Cal.Rptr.3d 803, 165 P.3d 581].)

For an instruction on primary assumption of risk applicable to coparticipants, see CACI No. 408, *Primary Assumption of Risk—Liability of Coparticipant in Sport or Other Recreational Activity*. For an instruction on primary assumption of risk applicable to facilities owners and operators and to event sponsors, see CACI No. 410, *Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors*.

### Sources and Authority

- “In order to support a cause of action in cases in which it is alleged that a sports instructor has required a student to perform beyond the student’s capacity or without providing adequate instruction, it must be alleged and proved that the instructor acted with intent to cause a student’s injury or that the instructor acted recklessly in the sense that the instructor’s conduct was ‘totally outside the range of the ordinary activity’ involved in teaching or coaching the sport.” (*Kahn v. East Side Union High School District* (2003) 31 Cal.4th 990, 1011 [4 Cal.Rptr.3d 103, 75 P.3d 30], internal citation omitted.)
- “[T]he primary assumption of risk doctrine is not limited to activities classified as sports, but applies as well to other recreational activities ‘involving an inherent risk of injury to voluntary participants ... where the risk cannot be eliminated without altering the fundamental nature of the activity.’ ” (*Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1156 [150 Cal.Rptr.3d 551, 290 P.3d 1158].)
- “Although the doctrine is often applied as between sports coparticipants, it defines the duty owed as between persons engaged in any activity involving inherent risks. The doctrine applies to activity ‘done for enjoyment or thrill, requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury’ ... .” (*Jimenez v. Roseville City School Dist.* (2016) 247 Cal.App.4th 594, 601 [202 Cal.Rptr.3d 536], internal citations omitted; see also *Bertsch v. Mammoth Community Water Dist.* (2016) 247 Cal.App.4th 1201, 1208 [202 Cal.Rptr.3d 757] [“These factors certainly apply to skateboarding.”], internal citations omitted.)
- “Here, we do not deal with the relationship between coparticipants in a sport, or with the duty that an operator may or may not owe to a spectator. Instead, we deal with the duty of a coach or trainer to a student who has entrusted himself to the former's tutelage. There are precedents reaching back for most of this century that find an absence of duty to coparticipants and, often, to spectators, but the law is otherwise as applied to coaches and instructors. For them, the general rule is that coaches and instructors owe a duty of due care to persons in their charge. The coach or instructor is not, of course, an insurer, and a student may be held to notice that which is obvious and to ask appropriate questions. But all of the authorities that comment on the issue have recognized the existence of a duty of care.” (*Tan v. Goddard* (1993) 13 Cal.App.4th 1528, 1535–1536 [17 Cal.Rptr.2d 89, internal citations omitted].)
- “[D]ecisions have clarified that the risks associated with learning a sport may themselves be inherent risks of the sport, and that an instructor or coach generally does not increase the risk of harm inherent

in learning the sport simply by urging the student to strive to excel or to reach a new level of competence.” (*Kahn, supra*, 31 Cal.4th at p. 1006.)

- “To the extent a duty is alleged against a coach for ‘pushing’ and/or ‘challenging’ a student to improve and advance, the plaintiff must show that the coach intended to cause the student’s injury or engaged in reckless conduct—that is, conduct totally outside the range of the ordinary activity involved in teaching or coaching the sport. Furthermore, a coach has a duty of ordinary care not to increase the risk of injury to a student by encouraging or allowing the student to participate in the sport when he or she is physically unfit to participate or by allowing the student to use unsafe equipment or instruments.” (*Eriksson, supra*, 191 Cal.App.4th at p. 845, internal citation omitted.)
- “That an instructor might ask a student to do more than the student can manage is an inherent risk of the activity. Absent evidence of recklessness, or other risk-increasing conduct, liability should not be imposed simply because an instructor asked the student to take action beyond what, with hindsight, is found to have been the student's abilities. To hold otherwise would discourage instructors from requiring students to stretch, and thus to learn, and would have a generally deleterious effect on the sport as a whole.” (*Honeycutt v. Meridian Sports Club, LLC* (2014) 231 Cal.App.4th 251, 258 [179 Cal.Rptr.3d 473].)
- Coaches and sports instructors “owe students a duty ‘not to increase the risks inherent in the learning process undertaken by the student.’ But this does not require them to ‘fundamentally alter the nature of the sport and, in some instances, effectively preclude participation altogether ... .’ Instead, ‘[b]y choosing to participate in a sport that poses the obvious possibility of injury, the student athlete must learn to accept an adverse result of the risks inherent in the sport.’ ” (*Lupash v. City of Seal Beach* (1999) 75 Cal.App.4th 1428, 1436–1437 [89 Cal.Rptr.2d 920], internal citations omitted.)
- “The determinant of duty, ‘inherent risk,’ is to be decided solely as a question of law and based on the general characteristics of the sport activity and the parties' relationship to it.” (*Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 501 [194 Cal.Rptr.3d 830].)
- “Admittedly, it is sometimes said that ‘[t]he existence and scope of a defendant's duty of care in the primary assumption of risk context “is a legal question which depends on the nature of the sport or activity ... and on the parties’ general relationship to the activity, and is an issue to be decided by the court, rather than the jury.”’ This statement of the rule is correct where there is no dispute about the inherent risks, and such cases may be resolved on summary judgment. [¶] However this statement is overly broad. Although the risks inherent in many activities are not subject to reasonable dispute (e.g., being hit with a baseball during a game), the risks inherent in some activities are not commonly known. In such cases, expert testimony may be required ‘“for purposes of weighing whether the inherent risks of the activity were increased by the defendant's conduct.”’ ... Thus, it is not entirely accurate to say inherent risks of an activity always present purely legal questions, because sometimes the nature of an activity and its risks must be gleaned from the evidence.” (*Jimenez, supra*, 247 Cal.App.4th at p. 608, original italics, internal citations omitted.)
- “Although we recognize the Court of Appeal decisions specifically addressing the point are in conflict, we believe resolving this issue is not a matter of further defining [defendant]’s duty, which would be a question of law for the court. Rather, it requires application of the governing standard of



care (the duty not to increase the risks inherent in the sport) to the facts of this particular case—the traditional role of the trier of fact. (See, e.g., *Vine v. Bear Valley Ski Co.*, *supra*, 118 Cal.App.4th at pp. 591–592 [whether defendant’s design of snowboard jump increased inherent risks of snowboarding is question for jury]; *Solis v. Kirkwood Resort Co.*, *supra*, 94 Cal.App.4th at p. 365 [whether artificial jumps built by resort increased inherent risk of falling while skiing is question for jury]; *Lowe v. California League of Prof. Baseball* (1997) 56 Cal.App.4th 112, 123 [65 Cal.Rptr.2d 105] [whether distraction caused by activities of minor league baseball team's mascot increased inherent risk of spectator being hit by a foul ball ‘is issue of fact to be resolved at trial’]; but see *Huff v. Wilkins*, *supra*, 138 Cal.App.4th at p. 745 [‘it is the trial court’s province to determine whether defendants breached their duty not to increase the inherent risk of a collision [in the sport of off-roading], and it should hold a hearing for this purpose before impaneling a jury’]; *American Golf Corp. v. Superior Court* (2000) 79 Cal.App.4th 30, 37 [93 Cal.Rptr.2d 683] [‘[i]t is for the court to decide ... whether the defendant has increased the risks of the activity beyond the risks inherent in the sport’]; see also *Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 995, fn. 23 [101 Cal.Rptr.2d 325] [indicating it is for the court to determine whether defendant's conduct increased the risk inherent in participating in a particular sport, but that trial court may receive expert testimony on the customary practices in the sport to make that determination].) [¶] Our conclusion it is for the trier of fact to determine whether [defendant] breached his limited duty not to increase the risks inherent in the sport of volleyball finds solid support in the Supreme Court’s most recent sports injury, primary assumption of the risk decision, *Shin v. Ahn*, *supra*, 42 Cal.4th 482, a case that postdates the appellate court decisions suggesting the issue is one for the court to resolve.” (*Luna*, *supra*, 169 Cal.App.4th at pp. 112–113.)

- “The existence of a duty of care is a separate issue from the question whether (on the basis of foreseeability among other factors) a particular defendant breached that duty of care, which is an essentially factual matter.” (*Kockelman v. Segal* (1998) 61 Cal.App.4th 491, 498 [71 Cal.Rptr.2d 552].)
- “[A duty not to increase the risk] arises only if there is an ‘organized relationship’ between the defendants and the participant in relation to the sporting activity, such as exists between ... a coach or instructor and his or her students. [I]mposing such a duty in the context of these types of relationships is justified because the defendants are ‘responsible for, or in control of, the conditions under which the [participant] engaged in the sport.’” (*Bertsch*, *supra*, 247 Cal.App.4th at pp. 1208–1209, internal citation omitted.)

### Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1339, 1340, 1343–1350

Haning et al., California Practice Guide: Personal Injury, Ch. 3-D, *Mitigating Factors In Reduction Of Damages*, ¶¶ 3:234–3:254.30 (The Rutter Group)

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

23 California Forms of Pleading and Practice, Ch. 273, *Games, Sports, and Athletics*, § 273.31 (Matthew

Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.401 et seq. (Matthew Bender)

#### 410. Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors

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[Name of plaintiff] claims [he/she] was harmed while [participating in/watching] [sport or other recreational activity, e.g., snowboarding] at [name of defendant]'s [specify facility or event where plaintiff was injured, e.g., ski resort]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] was the [owner/operator/sponsor/other] of [e.g., a ski resort];
  2. That [name of defendant] unreasonably increased the risks to [name of plaintiff] over and above those inherent in [e.g., snowboarding];
  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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New December 2013

#### Directions for Use

This instruction sets forth a plaintiff's response to a defendant's assertion of the affirmative defense of primary assumption of risk. Primary assumption of risk generally absolves the defendant of a duty of care toward the plaintiff with regard to injury incurred in the course of a sporting or other recreational activity covered by the doctrine. (See *Knight v. Jewett* (1992) 3 Cal.4th 296, 320 [11 Cal.Rptr.2d 2, 834 P.2d 696].) There is, however, a duty applicable to facilities owners and operators and to event sponsors not to unreasonably increase the risks of injury to participants and spectators beyond those inherent in the activity. (See *Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1162 [150 Cal.Rptr.3d 551, 290 P.3d 1158] [participants]; *Lowe v. California League of Prof. Baseball* (1997) 56 Cal.App.4th 112, 123 [65 Cal.Rptr.2d 105] [spectators].)

While duty is a question of law, courts have held that whether the defendant has increased the risk is a question of fact for the jury. (See *Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113 [86 Cal.Rptr.3d 588] [and cases cited therein].) There may also be disputed facts that must be resolved by a jury before it can be determined if the doctrine applies. (See *Shin v. Ahn* (2007) 42 Cal.4th 482, 486 [64 Cal.Rptr.3d 803, 165 P.3d 581].)

For an instruction on primary assumption of risk applicable to coparticipants, see CACI No. 408, *Primary Assumption of Risk—Liability of Coparticipant in Sport or Other Recreational Activity*. For an instruction on primary assumption of risk applicable to instructors, trainers, and coaches, see CACI No. 409, *Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches*.

#### Sources and Authority

- “[U]nder the primary assumption of risk doctrine, operators, sponsors and instructors in recreational activities posing inherent risks of injury have no duty to eliminate those risks, but do owe participants the duty not to unreasonably increase the risks of injury beyond those inherent in the activity.” (*Nalwa, supra*, 55 Cal.4th at p. 1162.)
- “The doctrine applies to recreational activities ‘involving an inherent risk of injury to voluntary participants ... where the risk cannot be eliminated without altering the fundamental nature of the activity.’ ” (*Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 500 [194 Cal.Rptr.3d 830].)
- “Although the doctrine is often applied as between sports coparticipants, it defines the duty owed as between persons engaged in any activity involving inherent risks. The doctrine applies to activity ‘done for enjoyment or thrill, requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury’ ... .” (*Jimenez v. Roseville City School Dist.* (2016) 247 Cal.App.4th 594, 601 [202 Cal.Rptr.3d 536], internal citations omitted; see also *Bertsch v. Mammoth Community Water Dist.* (2016) 247 Cal.App.4th 1201, 1208 [202 Cal.Rptr.3d 757] [“These factors certainly apply to skateboarding.”], internal citations omitted.)
- “The determinant of duty, ‘inherent risk,’ is to be decided solely as a question of law and based on the general characteristics of the sport activity and the parties' relationship to it.” (*Griffin, supra*, 242 Cal.App.4th at p. 501.)
- “Admittedly, it is sometimes said that ‘[t]he existence and scope of a defendant's duty of care in the primary assumption of risk context “is a legal question which depends on the nature of the sport or activity ... and on the parties’ general relationship to the activity, and is an issue to be decided by the court, rather than the jury.”’ This statement of the rule is correct where there is no dispute about the inherent risks, and such cases may be resolved on summary judgment. [¶] However this statement is overly broad. Although the risks inherent in many activities are not subject to reasonable dispute (e.g., being hit with a baseball during a game), the risks inherent in some activities are not commonly known. In such cases, expert testimony may be required “for purposes of weighing whether the inherent risks of the activity were increased by the defendant's conduct.”’ ... Thus, it is not entirely accurate to say inherent risks of an activity always present purely legal questions, because sometimes the nature of an activity and its risks must be gleaned from the evidence.” (*Jimenez, supra*, 247 Cal.App.4th at p. 608, original italics, internal citations omitted.)
- “Although we recognize the Court of Appeal decisions specifically addressing the point are in conflict, we believe resolving this issue is not a matter of further defining [defendant]’s duty, which would be a question of law for the court. Rather, it requires application of the governing standard of care (the duty not to increase the risks inherent in the sport) to the facts of this particular case—the traditional role of the trier of fact. (See, e.g., *Vine v. Bear Valley Ski Co.*, *supra*, 118 Cal.App.4th at pp. 591–592 [whether defendant’s design of snowboard jump increased inherent risks of snowboarding is question for jury]; *Solis v. Kirkwood Resort Co.*, *supra*, 94 Cal.App.4th at p. 365 [whether artificial jumps built by resort increased inherent risk of falling while skiing is question for jury]; *Lowe v. California League of Prof. Baseball* (1997) 56 Cal.App.4th 112, 123 [65 Cal.Rptr.2d 105] [whether distraction caused by activities of minor league baseball team's mascot increased

inherent risk of spectator being hit by a foul ball ‘is issue of fact to be resolved at trial’]; but see *Huff v. Wilkins, supra*, 138 Cal.App.4th at p. 745 [‘it is the trial court’s province to determine whether defendants breached their duty not to increase the inherent risk of a collision [in the sport of off-roading], and it should hold a hearing for this purpose before impaneling a jury’]; *American Golf Corp. v. Superior Court* (2000) 79 Cal.App.4th 30, 37 [93 Cal.Rptr.2d 683] [‘[i]t is for the court to decide ... whether the defendant has increased the risks of the activity beyond the risks inherent in the sport’]; see also *Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 995, fn. 23 [101 Cal.Rptr.2d 325] [indicating it is for the court to determine whether defendant's conduct increased the risk inherent in participating in a particular sport, but that trial court may receive expert testimony on the customary practices in the sport to make that determination.] [¶] Our conclusion it is for the trier of fact to determine whether [defendant] breached his limited duty not to increase the risks inherent in the sport of volleyball finds solid support in the Supreme Court’s most recent sports injury, primary assumption of the risk decision, *Shin v. Ahn, supra*, 42 Cal.4th 482, a case that postdates the appellate court decisions suggesting the issue is one for the court to resolve.” (*Luna, supra*, 169 Cal.App.4th at pp. 112–113.)

- “Although defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport. Thus, although a ski resort has no duty to remove moguls from a ski run, it clearly does have a duty to use due care to maintain its towropes in a safe, working condition so as not to expose skiers to an increased risk of harm. The cases establish that the latter type of risk, posed by a ski resort's negligence, clearly is not a risk (inherent in the sport) that is assumed by a participant.” (*Knight, supra*, 3 Cal.4th at pp. 315–316.)
- “Under *Knight*, defendants had a duty *not to increase* the inherent risks to which spectators at professional baseball games are regularly exposed and which they assume. As a result, a triable issue of fact remained, namely whether the [defendants]’ mascot cavorting in the stands and distracting plaintiff's attention, *while the game was in progress*, constituted a breach of that duty, i.e., constituted negligence in the form of increasing the inherent risk to plaintiff of being struck by a foul ball.” (*Lowe, supra*, 56 Cal.App.4th at p. 114, original italics.)
- “[T]hose responsible for maintaining athletic facilities have a ... duty not to increase the inherent risks, albeit in the context of businesses selling recreational opportunities.” (*Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 162 [41 Cal.Rptr.3d 299, 131 P.3d 383], internal citation omitted.)
- “*Knight*, consistently with established case law, simply requires courts in each instance to examine the question of duty in light of the nature of the defendant's activities and the relationship of the parties to that activity.” (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 482 [63 Cal.Rptr.2d 291, 936 P.2d 70].)
- “Because primary assumption of risk focuses on the question of duty, it is not dependent on either the plaintiff's implied consent to, or subjective appreciation of, the potential risk.” (*Griffin, supra*, 242 Cal.App.4th at p. 502.)

- “Defendants' obligation not to increase the risks inherent in the activity included a duty to provide safe equipment for the trip, such as a safe and sound craft.” (*Ferrari v. Grand Canyon Dories* (1995) 32 Cal.App.4th 248, 255 [38 Cal.Rptr.2d 65].)
- “[A duty not to increase the risk] arises only if there is an ‘“organized relationship”’ between the defendants and the participant in relation to the sporting activity, such as exists between a recreational business operator and its patrons . . . . [I]mposing such a duty in the context of these types of relationships is justified because the defendants are ‘responsible for, or in control of, the conditions under which the [participant] engaged in the sport.’” However, ‘[t]his policy justification does not extend to a defendant wholly uninvolved with and unconnected to the sport,’ . . . who neither ‘held out their driveway as an appropriate place to skateboard or in any other way represented that the driveway was a safe place for skateboarding.’” (*Bertsch, supra*, 247 Cal.App.4th at pp. 1208–1209, internal citations omitted.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1339, 1340, 1343–1350

Haning et al., California Practice Guide: Personal Injury, Ch. 3-D, *Mitigating Factors In Reduction Of Damages*, ¶¶ 3:234–3:254.30 (The Rutter Group)

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

23 California Forms of Pleading and Practice, Ch. 273, *Games, Sports, and Athletics*, § 273.31 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.401 et seq. (Matthew Bender)

#### 418. Presumption of Negligence per se

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[Insert citation to statute, regulation, or ordinance] states:

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##### If you decide

1. That [name of plaintiff/defendant] violated this law and
2. That the violation was a substantial factor in bringing about the harm,

then you must find that [name of plaintiff/defendant] was negligent [unless you also find that the violation was excused].

If you find that [name of plaintiff/defendant] did not violate this law or that the violation was not a substantial factor in bringing about the harm [or if you find the violation was excused], then you must still decide whether [name of plaintiff/defendant] was negligent in light of the other instructions.

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New September 2003; Revised December 2005, June 2011

##### Directions for Use

This jury instruction addresses the establishment of the two factual elements underlying the presumption of negligence. If they are not established, then a finding of negligence cannot be based on the alleged statutory violation. However, negligence can still be proven by other means. (See *Nunneley v. Edgar Hotel* (1950) 36 Cal.2d 493, 500–501 [225 P.2d 497].)

If a rebuttal is offered on the ground that the violation was excused, then the bracketed portion in the second and last paragraphs should be read. For an instruction on excuse, see CACI No. 420, *Negligence per se: Rebuttal of the Presumption of Negligence (Violation Excused)*.

If the statute is lengthy, the judge may want to read it at the end of this instruction instead of at the beginning. The instruction would then need to be revised, to tell the jury that they will be hearing the statute at the end.

Rebuttal of the presumption of negligence is addressed in the instructions that follow (see CACI Nos. 420 and 421).

##### Sources and Authority

- Negligence per se. Evidence Code section 669.
- “Although compliance with the law does not prove the absence of negligence, violation of the law does raise a presumption that the violator was negligent. This is called negligence per se. The

presumption of negligence arises if (1) the defendant violated a statute; (2) the violation proximately caused the plaintiff's injury; (3) the injury resulted from the kind of occurrence the statute was designed to prevent; and (4) the plaintiff was one of the class of persons the statute was intended to protect. The first two elements are normally questions for the trier of fact and the last two are determined by the trial court as a matter of law. That is, the trial court decides whether a statute or regulation defines the standard of care in a particular case.” (*Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, 1526 [119 Cal.Rptr.3d 529], internal citations omitted; see also Cal. Law Revision Com. to Evid. Code, § 669.)

- “Under the doctrine of negligence per se, the plaintiff ‘borrows’ statutes to prove duty of care and standard of care. [Citation.] The plaintiff still has the burden of proving causation.” (*David v. Hernandez* (2014) 226 Cal.App.4th 578, 584 [172 Cal.Rptr.3d 204].)
- “Where a statute establishes a party's duty, ‘ ‘proof of the [party's] violation of a statutory standard of conduct raises a presumption of negligence that may be rebutted only by evidence establishing a justification or excuse for the statutory violation.’ This rule, generally known as the doctrine of negligence per se, means that where the court has adopted the conduct prescribed by statute as the standard of care for a reasonable person, a violation of the statute is presumed to be negligence.” (*Spriesterbach v. Holland* (2013) 215 Cal.App.4th 255, 263 [155 Cal.Rptr.3d 306], internal citation omitted.)
- “[I]n negligence per se actions, the plaintiff must produce evidence of a violation of a statute and a substantial probability that the plaintiff's injury was caused by the violation of the statute before the burden of proof shifts to the defendant to prove the violation of the statute did not cause the plaintiff's injury.” (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 371 [199 Cal.Rptr.3d 522].)
- “ ‘The significance of a statute in a civil suit for negligence lies in its formulation of a standard of conduct that the court adopts in the determination of such liability. The decision as to what the civil standard should be still rests with the court, and the standard formulated by a legislative body in a police regulation or criminal statute becomes the standard to determine civil liability only because the court accepts it. In the absence of such a standard the case goes to the jury, which must determine whether the defendant has acted as a reasonably prudent man would act in similar circumstances. The jury then has the burden of deciding not only what the facts are but what the unformulated standard is of reasonable conduct. When a legislative body has generalized a standard from the experience of the community and prohibits conduct that is likely to cause harm, the court accepts the formulated standards and applies them [citations], except where they would serve to impose liability without fault.’ ” (*Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 547 [25 Cal.Rptr.2d 97, 863 P.2d 167], internal citations omitted.)
- “There is no doubt in this state that a federal statute or regulation may be adopted as a standard of care.” (*DiRosa v. Showa Denko K. K.* (1996) 44 Cal.App.4th 799, 808 [52 Cal.Rptr.2d 128].)
- “[T]he courts and the Legislature may create a negligence duty of care, but an administrative agency cannot independently impose a duty of care if that authority has not been properly delegated to the agency by the Legislature.” (*Cal. Serv. Station Etc. Ass'n v. Am. Home Assur. Co.* (1998) 62 Cal.App.4th 1166, 1175 [73 Cal.Rptr.2d 182].)



- “In combination, the [1999] language and the deletion [to Lab. Code, § 6304.5] indicate that henceforth, Cal-OSHA provisions are to be treated like any other statute or regulation and may be admitted to establish a standard or duty of care in all negligence and wrongful death actions, including third party actions.” (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 928 [22 Cal.Rptr.3d 530, 102 P.3d 915].)

### *Secondary Sources*

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 871–896

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-H, *Negligence Predicated On Statutory Violation (“Negligence Per Se”)*, ¶ 2:1845 (The Rutter Group)

Wegner et al., California Practice Guide: Civil Trials & Evidence, Ch. 8G-C, *Procedural Considerations-Presumptions*, ¶ 8:3604 (The Rutter Group)

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 1.28-1.31

1 Levy et al., California Torts, Ch. 3, *Proof of Negligence*, §§ 3.10, 3.13 (Matthew Bender)

4 California Trial Guide, Unit 90, *Closing Argument*, §§ 90.88, 90.89 (Matthew Bender)

California Products Liability Actions, Ch. 7, *Proof*, § 7.04 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.50 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, §§ 165.70, 165.80, 165.81 (Matthew Bender)

**426. Negligent Hiring, Supervision, or Retention of Employee**

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[Name of plaintiff] claims that [he/she] was harmed by [name of employee] and that [name of employer defendant] is responsible for that harm because [name of employer defendant] negligently [hired/ supervised/ [or] retained] [name of employee]. To establish this claim, [name of plaintiff] must prove all of the following:

1. [That [name of employer defendant] hired [name of employee];]
  2. That [name of employee] [[was/became] [unfit [or] incompetent] to perform the work for which [he/she] was hired/[specify other particular risk]];
  3. That [name of employer defendant] knew or should have known that [name of employee] [[was/became] [unfit/ [or] incompetent]/[other particular risk]] and that this [unfitness [or] incompetence/ [other particular risk]] created a particular risk to others;
  4. That [name of employee]'s [unfitness [or] incompetence/ [other particular risk]] harmed [name of plaintiff]; and
  5. That [name of employer defendant]'s negligence in [hiring/ supervising/ [or] retaining] [name of employee] was a substantial factor in causing [name of plaintiff]'s harm.
- 

New December 2009; Revised December 2015, June 2016

**Directions for Use**

Give this instruction if the plaintiff alleges that the employer of an employee who caused harm was negligent in the hiring, supervision, or retention of the employee after actual or constructive notice that the employee created a particular risk or hazard to others. For instructions holding the employer vicariously liable (without fault) for the acts of the employee, see the Vicarious Responsibility series, CACI No. 3700 et seq.

Include optional question 1 if the employment relationship between the defendant and the negligent person is contested. (See *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1185–1189 [183 Cal.Rptr.3d 394].) It appears that liability may also be imposed on the hirer of an independent contractor for the negligent selection of the contractor. (See *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 662–663 [109 Cal.Rptr. 269].) Therefore, it would not seem to be necessary to instruct on the test to determine whether the relationship is one of employer-employee or hirer-independent contractor. (See CACI No. 3704, *Existence of “Employee” Status Disputed.*)

Choose “became” in elements 2 and 3 in a claim for negligent retention.

In most cases, “unfitness” or “incompetence” (or both) will adequately describe the particular risk that

the employee represents. However, there may be cases in which neither word adequately describes the risk that the employer should have known about.

### Sources and Authority

- “California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee.” (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 [58 Cal.Rptr.2d 122].)
- “Negligence liability will be imposed on an employer if it ‘knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.’” (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139 [91 Cal.Rptr.3d 864].)
- “[Plaintiff] brought several claims against [defendant employer], including negligent hiring, supervising, and retaining [employee], and failure to warn. To prevail on his negligent hiring/retention claim, [plaintiff] will be required to prove [employee] was [defendant employer]’s agent and [defendant employer] knew or had reason to believe [employee] was likely to engage in sexual abuse. On the negligent supervision and failure to warn claims, [plaintiff] will be required to show [defendant employer] knew or should have known of [employee]’s alleged misconduct and did not act in a reasonable manner when it allegedly recommended him to serve as [plaintiff]’s Bible instructor.” (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 591 [201 Cal.Rptr.3d 156], internal citations omitted.)
- “Liability for negligent supervision and/or retention of an employee is one of direct liability for negligence, not vicarious liability.” (*Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 815 [52 Cal.Rptr.3d 376].)
- “Liability for negligent hiring and supervision is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees. The tort has developed in California in factual settings where the plaintiff’s injury occurred in the workplace, or the contact between the plaintiff and the employee was generated by the employment relationship.” (*Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1339–1340 [78 Cal.Rptr.2d 525].)
- “To establish negligent supervision, a plaintiff must show that a person in a supervisory position over the actor had prior knowledge of the actor’s propensity to do the bad act.” (*Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 902 [189 Cal.Rptr.3d 570].)
- “Apparently, [defendant] had no actual knowledge of [the employee]’s past. But the evidence recounted above presents triable issues of material fact regarding whether the [defendant] had reason to believe [the employee] was unfit or whether the [defendant] failed to use reasonable care in investigating [the employee].” (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 843 [10 Cal.Rptr.2d 748]; cf. *Flores v. AutoZone West Inc.* (2008) 161 Cal.App.4th 373, 384–386 [74 Cal.Rptr.3d 178] [employer had no duty to investigate and discover that job applicant had a juvenile delinquency record].)

- “A claim that an employer was negligent in hiring or retaining an employee-driver rarely differs in substance from a claim that an employer was negligent in entrusting a vehicle to the employee. Awareness, constructive or actual, that a person is unfit or incompetent to drive underlies a claim that an employer was negligent in hiring or retaining that person as a driver. (See Judicial Council of Cal. Civ. Jury Instns. (2011) CACI No. 426.) That same awareness underlies a claim for negligent entrustment. (See CACI No. 724.) In a typical case, like this, the two claims are functionally identical.” (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1157 [126 Cal.Rptr.3d 443, 253 P.3d 535].)
- “[I]f an employer admits vicarious liability for its employee’s negligent driving in the scope of employment, ‘the damages attributable to both employer and employee will be coextensive.’ Thus, when a plaintiff alleges a negligent entrustment or hiring cause of action against the employer and the employer admits vicarious liability for its employee’s negligent driving, the universe of defendants who can be held responsible for plaintiff’s damages is reduced by one—the employer—for purposes of apportioning fault under Proposition 51. Consequently, the employer would not be mentioned on the special verdict form. The jury must divide fault for the accident among the listed tortfeasors, and the employer is liable only for whatever share of fault the jury assigns to the employee.” (*Diaz, supra*, 41 Cal.4th at p. 1159, internal citations omitted.)
- “[A] public school district may be vicariously liable under [Government Code] section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student.” (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879 [138 Cal.Rptr.3d 1, 270 P.3d 699].)
- “[P]laintiff premises her direct negligence claim on the hospital’s alleged failure to properly screen [doctor] before engaging her and to properly supervise her after engaging her. Since hiring and supervising medical personnel, as well as safeguarding incapacitated patients, are clearly within the scope of services for which the hospital is licensed, its alleged failure to do so necessarily states a claim for professional negligence. Accordingly, plaintiff cannot pursue a claim of direct negligence against the hospital.” (*So v. Shin* (2013) 212 Cal.App.4th 652, 668 [151 Cal.Rptr.3d 257].)
- “[Asking] whether [defendant] hired [employee] was necessary given the dispute over who hired [employee]—[defendant] or [decedent]. As the trial court noted, ‘The employment was neither stipulated nor obvious on its face.’ However, if the trial court began the jury instructions or special verdict form with, ‘Was [employee] unfit or incompetent to perform the work for which he was hired,’ confusion was likely to result as the question assumed a hiring. Therefore, the jury needed to answer the question of whether [defendant] hired [employee] before it could determine if [defendant] negligently hired, retained, or supervised him.” (*Jackson, supra*, 233 Cal.App.4th at pp. 1187–1188.)

### *Secondary Sources*

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 1190

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-H, *Negligence*, ¶ 5:615 et seq. (The Rutter Group)

3 California Torts, Ch. 40B, *Employment Discrimination and Harassment*, § 40B.21 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.12 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.22 (Matthew Bender)

### 430. Causation: Substantial Factor

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**A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.**

**[Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.]**

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*New September 2003; Revised October 2004, June 2005, December 2005, December 2007*

#### Directions for Use

As phrased, this definition of “substantial factor” subsumes the “but for” test of causation, that is, “but for” the defendant’s conduct, the plaintiff’s harm would not have occurred. (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052 [1 Cal.Rptr.2d 913, 819 P.2d 872]; see Rest.2d Torts, § 431.) The optional last sentence makes this explicit, and in some cases it may be error not to give this sentence. (See *Soule v. GM Corp.* (1994) 8 Cal.4th 548, 572–573 [34 Cal.Rptr.2d 607, 882 P.2d 298]; Rest.2d Torts, § 432(1).)

“Conduct,” in this context, refers to the culpable acts or omissions on which a claim of legal fault is based, e.g., negligence, product defect, breach of contract, or dangerous condition of public property. This is in contrast to an event that is not a culpable act but that happens to occur in the chain of causation, e.g., that the plaintiff’s alarm clock failed to go off, causing her to be at the location of the accident at a time when she otherwise would not have been there. The reference to “conduct” may be changed as appropriate to the facts of the case.

The “but for” test of the last optional sentence does not apply to concurrent independent causes, which are multiple forces operating at the same time and independently, each of which would have been sufficient by itself to bring about the same harm. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1240 [135 Cal.Rptr.2d 629, 70 P.3d 1046]; *Barton v. Owen* (1977) 71 Cal.App.3d 484, 503–504 [139 Cal.Rptr. 494]; see Rest.2d Torts, § 432(2).) Accordingly, do not include the last sentence in a case involving concurrent independent causes.

In cases of multiple (concurrent dependent) causes, CACI No. 431, *Causation: Multiple Causes*, should also be given.

In asbestos-related cancer cases, *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 977 [67 Cal.Rptr.2d 16, 941 P.2d 1203] requires a different instruction regarding exposure to a particular product. Give CACI No. 435, *Causation for Asbestos-Related Cancer Claims*, and do not give this instruction.

#### Sources and Authority

- “The test for joint tort liability is set forth in section 431 of the Restatement of Torts 2d, which provides: ‘The actor’s negligent conduct is a legal cause of harm to another if (a) his conduct is a

substantial factor in bringing about the harm, and, (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.’ Section 431 correctly states California law as to the issue of causation in tort cases.” (*Wilson v. Blue Cross of So. Cal.* (1990) 222 Cal.App.3d 660, 671–672 [271 Cal.Rptr. 876].)

- “California has definitively adopted the substantial factor test of the Restatement Second of Torts for cause-in-fact determinations. Under that standard, a cause in fact is something that is a substantial factor in bringing about the injury. The substantial factor standard generally produces the same results as does the ‘but for’ rule of causation which states that a defendant’s conduct is a cause of the injury if the injury would not have occurred ‘but for’ that conduct. The substantial factor standard, however, has been embraced as a clearer rule of causation—one which subsumes the ‘but for’ test while reaching beyond it to satisfactorily address other situations, such as those involving independent or concurrent causes in fact.” (*Rutherford, supra*, 16 Cal.4th at pp. 968–969, internal citations omitted.)
- “The term ‘substantial factor’ has not been judicially defined with specificity, and indeed it has been observed that it is ‘neither possible nor desirable to reduce it to any lower terms.’ This court has suggested that a force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage, or loss is not a substantial factor. Undue emphasis should not be placed on the term ‘substantial.’ For example, the substantial factor standard, formulated to aid plaintiffs as a broader rule of causality than the ‘but for’ test, has been invoked by defendants whose conduct is clearly a ‘but for’ cause of plaintiff’s injury but is nevertheless urged as an insubstantial contribution to the injury. Misused in this way, the substantial factor test ‘undermines the principles of comparative negligence, under which a party is responsible for his or her share of negligence and the harm caused thereby.’ ” (*Rutherford, supra*, 16 Cal.4th at pp. 968–969, internal citations omitted.)
- “The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical. Thus, ‘a force which plays only an “infinitesimal” or “theoretical” part in bringing about injury, damage, or loss is not a substantial factor’, but a very minor force that does cause harm is a substantial factor. This rule honors the principle of comparative fault.” (*Bockrath v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71, 79 [86 Cal.Rptr.2d 846, 980 P.2d 398], internal citations omitted.)
- “The text of Restatement Torts second section 432 demonstrates how the ‘substantial factor’ test subsumes the traditional ‘but for’ test of causation. Subsection (1) of section 432 provides: ‘Except as stated in Subsection (2), the actor’s negligent conduct *is not a substantial factor* in bringing about harm to another *if the harm would have been sustained even if the actor had not been negligent.*’ ... Subsection (2) states that if ‘two forces are actively operating ... and each of itself is sufficient to bring about harm to another, the actor’s negligence may be found to be a substantial factor in bringing it about.’ ” (*Viner, supra*, 30 Cal.4th at p. 1240, original italics.)
- “Because the ‘substantial factor’ test of causation subsumes the ‘but for’ test, the ‘but for’ test has been phrased in terms of ‘substantial factor,’ as follows, in the context, as here, of a combination of causes dependent on one another: A defendant’s negligent conduct may combine with another factor to cause harm; if a defendant’s negligence was a substantial factor in causing the plaintiff’s harm, then the defendant is responsible for the harm; a defendant cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing the plaintiff’s harm; but

conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.” (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187 [164 Cal.Rptr.3d 309].)

- “A tort is a legal cause of injury only when it is a substantial factor in producing the injury. If the external force of a vehicle accident was so severe that it would have caused identical injuries notwithstanding an abstract ‘defect’ in the vehicle’s collision safety, the defect cannot be considered a substantial factor in bringing them about. [¶] The general causation instruction given by the trial court correctly advised that plaintiff could not recover for a design defect unless it was a ‘substantial factor’ in producing plaintiff’s ‘enhanced’ injuries. However, this instruction dealt only by ‘negative implication’ with [defendant]’s theory that any such defect was *not* a ‘substantial factor’ in this case because this particular accident would have broken plaintiff’s ankles in any event. As we have seen, [defendant] presented substantial evidence to that effect. [Defendant] was therefore entitled to its special instruction, and the trial court’s refusal to give it was error.” (*Soule, supra*, 8 Cal.4th at p. 572–573, original italics, footnote and internal citations omitted.)
- “The first element of legal cause is cause in fact ... . The ‘but for’ rule has traditionally been applied to determine cause in fact. The Restatement formula uses the term *substantial factor* ‘to denote the fact that the defendant’s conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause.’ ” (*Mayes v. Bryan* (2006) 139 Cal.App.4th 1075, 1095 [44 Cal.Rptr.3d 14], internal citations omitted.)
- “If the accident would have happened anyway, whether the defendant was negligent or not, then his or her negligence was not a cause in fact, and of course cannot be the legal or responsible cause.” (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 370 [199 Cal.Rptr.3d 522].)
- “We have recognized that proximate cause has two aspects. ‘ “One is *cause in fact*. An act is a cause in fact if it is a necessary antecedent of an event.” ’ This is sometimes referred to as ‘but-for’ causation. n12-In cases where concurrent independent causes contribute to an injury, we apply the ‘substantial factor’ test of the Restatement Second of Torts, section 423, which subsumes traditional ‘but for’ causation. This case does not involve concurrent independent causes, so the ‘but for’ test governs questions of factual causation.” (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 354 [188 Cal.Rptr.3d 308, 349 P.3d 1013], original italics, footnote omitted.)
- “ ‘Whether a defendant’s conduct actually caused an injury is a question of fact ... that is ordinarily for the jury ... .’ [C]ausation in fact is ultimately a matter of probability and common sense: “[A plaintiff] is not required to eliminate entirely all possibility that the defendant’s conduct was not a cause. It is enough that he introduces evidence from which reasonable [persons] may conclude that it is more probable that the event was caused by the defendant than that it was not. The fact of causation is incapable of mathematical proof, since no [person] can say with absolute certainty what would have occurred if the defendant had acted otherwise. If, as a matter of ordinary experience, a particular act or omission might be expected to produce a particular result, and if that result has in fact followed, the conclusion may be justified that the causal relation exists. In drawing that conclusion, the triers of fact are permitted to draw upon ordinary human experience as to the probabilities of the case.” ’ ... ‘ “A mere possibility of ... causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.” ’ ” (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017,



1029–1030 [68 Cal.Rptr.3d 897], internal citations omitted.)

- “[E]vidence of causation ‘must rise to the level of a reasonable probability based upon competent testimony. [Citations.] ‘A possible cause only becomes ‘probable’ when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action.’ [Citation.] The defendant's conduct is not the cause in fact of harm “ ‘where the evidence indicates that there is less than a probability, i.e., a 50–50 possibility or a mere chance,’ ” that the harm would have ensued.’ ” (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 312 [111 Cal.Rptr.3d 787].)
- “However the test is phrased, causation in fact is ultimately a matter of probability and common sense.” (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 253 [7 Cal.Rptr.2d 101], relying on Rest.2d Torts, § 433B, com. b.)
- “The Supreme Court ... set forth explicit guidelines for plaintiffs attempting to allege injury resulting from exposure to toxic materials: A plaintiff must ‘allege that he was exposed to each of the toxic materials claimed to have caused a specific illness’; ‘identify each product that allegedly caused the injury’; allege ‘the toxins entered his body’ ‘as a result of the exposure’; allege that ‘he suffers from a specific illness, and that each toxin that entered his body was a substantial factor in bringing about, prolonging, or aggravating that illness’; and, finally, allege that ‘each toxin he absorbed was manufactured or supplied by a named defendant.’ ” (*Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1194 [130 Cal.Rptr.3d 571], quoting *Bockrath, supra*, 21 Cal.4th at p. 80, footnote omitted.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1185–1189, 1191

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 1.13–1.15

1 Levy et al., California Torts, Ch. 2, *Causation*, § 2.02 (Matthew Bender)

4 California Trial Guide, Unit 90, *Closing Argument*, § 90.89 (Matthew Bender)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.22, Ch. 7, *Proof*, § 7.06 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.71 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, §§ 165.260–165.263 (Matthew Bender)

### 435. Causation for Asbestos-Related Cancer Claims

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**A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It does not have to be the only cause of the harm.**

**[Name of plaintiff] may prove that exposure to asbestos from [name of defendant]'s product was a substantial factor causing [his/her/[name of decedent]'s] illness by showing, through expert testimony, that there is a reasonable medical probability that the exposure was a substantial factor contributing to [his/her] risk of developing cancer.**

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*New September 2003; Revised December 2007*

#### Directions for Use

If the issue of medical causation is tried separately, revise this instruction to focus on that issue.

If necessary, CACI No. 431, *Causation: Multiple Causes*, may also be given. Unless there are other defendants who are not asbestos manufacturers or suppliers, do not give CACI No. 430, *Causation: Substantial Factor*.

#### Sources and Authority

- “In the context of a cause of action for asbestos-related latent injuries, the plaintiff must first establish some threshold *exposure* to the defendant’s defective asbestos-containing products, and must further establish in reasonable medical probability that a particular exposure or series of exposures was a ‘legal cause’ of his injury, i.e., a *substantial factor* in bringing about the injury. In an asbestos-related cancer case, the plaintiff need *not* prove that fibers from the defendant’s product were the ones, or among the ones, that actually began the process of malignant cellular growth. Instead, the plaintiff may meet the burden of proving that exposure to defendant’s product was a substantial factor causing the illness by showing that in reasonable medical probability it was a substantial factor contributing to the plaintiff’s or decedent’s *risk* of developing cancer. The jury should be so instructed. The standard instructions on substantial factor and concurrent causation remain correct in this context and should also be given.” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 982–983 [67 Cal.Rptr.2d 16, 941 P.2d 1203], original italics, internal citation and footnotes omitted.)
- “The term ‘substantial factor’ has not been judicially defined with specificity, and indeed it has been observed that it is ‘neither possible nor desirable to reduce it to any lower terms.’ This court has suggested that a force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage, or loss is not a substantial factor. Undue emphasis should not be placed on the term ‘substantial.’ For example, the substantial factor standard, formulated to aid plaintiffs as a broader rule of causality than the ‘but for’ test, has been invoked by defendants whose conduct is clearly a ‘but for’ cause of plaintiff’s injury but is nevertheless urged as an insubstantial contribution to the injury. Misused in this way, the substantial factor test ‘undermines the principles of comparative negligence, under which a party is responsible for his or her share of negligence and the harm caused

thereby.’ ” (*Rutherford, supra*, 16 Cal.4th at p. 969, internal citations omitted.)

- “[A] very minor force that does cause harm is a substantial factor. This rule honors the principle of comparative fault.” (*Bockrath v. Aldrich Chem. Co.* (1999) 21 Cal.4th 71, 79 [86 Cal.Rptr.2d 846, 980 P.2d 398], internal citation omitted.)
- “Contrary to defendant’s assertion, the California Supreme Court’s decision in *Viner v. Sweet* (2003) 30 Cal.4th 1232 [135 Cal. Rptr. 2d 629, 70 P.3d 1046] (*Viner*) did not alter the causation requirement in asbestos-related cases. In *Viner*, the court noted that subsection (1) of section 432 of the Restatement Second of Torts, which provides that ‘the actor’s negligent conduct is not a substantial factor in bringing about harm to another if the harm would have been sustained even if the actor had not been negligent,’ ‘demonstrates how the “substantial factor” test subsumes the traditional “but for” test of causation.’ Defendant argues that *Viner* required plaintiffs to show that defendant’s product ‘independently caused [plaintiff’s] injury or that, but for that exposure, [plaintiff] would not have contracted lung cancer.’ *Viner*, however, is a legal malpractice case. It does not address the explicit holding in *Rutherford* that ‘plaintiffs may prove causation in asbestos-related cancer cases by demonstrating that the plaintiff’s exposure to defendant’s asbestos-containing product in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer, without the need to demonstrate that fibers from the defendant’s particular product were the ones, or among the ones, that actually produced the malignant growth.’ ” *Viner* is consistent with *Rutherford* insofar as *Rutherford* requires proof that an individual asbestos-containing product is a substantial factor contributing to the plaintiff’s risk or probability of developing cancer.” (*Jones v. John Crane, Inc.* (2005) 132 Cal.App.4th 990, 998, fn. 3 [35 Cal.Rptr.3d 144], internal citations omitted.)
- “ ‘A threshold issue in asbestos litigation is exposure to the defendant’s product. ... If there has been no exposure, there is no causation.’ Plaintiffs bear the burden of ‘demonstrating that exposure to [defendant’s] asbestos products was, in reasonable medical probability, a substantial factor in causing or contributing to [plaintiff’s] risk of developing cancer.’ ‘Factors relevant to assessing whether such a medical probability exists include frequency of exposure, regularity of exposure and proximity of the asbestos product to [plaintiff].’ Therefore, ‘[plaintiffs] cannot prevail against [defendant] without evidence that [plaintiff] was exposed to asbestos-containing materials manufactured or furnished by [defendant] with enough frequency and regularity as to show a reasonable medical probability that this exposure was a factor in causing the plaintiff’s injuries.’ ” (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1084 [109 Cal.Rptr.3d 371], internal citations omitted.)
- “Further, “[t]he mere “possibility” of exposure’ is insufficient to establish causation. ‘[P]roof that raises mere speculation, suspicion, surmise, guess or conjecture is not enough to sustain [the plaintiffs] burden’ of persuasion.” (*Izell v. Union Carbide Corp.* (2014) 231 Cal.App.4th 962, 969 [180 Cal.Rptr.3d 382], internal citations omitted.)
- “Plaintiffs may prove causation in an asbestos case by demonstrating that the plaintiff’s or decedent’s exposure to defendant’s asbestos-containing product in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff or decedent inhaled or ingested, and hence to the risk of developing asbestos-related cancer.” (*McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1103 [120 Cal.Rptr.2d 23], internal citations omitted.)

- “[G]iven the long latency period of asbestos-related disease, and the occupational settings that commonly exposed the worker to multiple forms and brands of asbestos products with varying degrees of toxicity,’ our Supreme Court has held that a plaintiff ‘need *not* prove with medical exactitude that fibers from a particular defendant's asbestos-containing products were those, or among those, that actually began the cellular process of malignancy.’ Rather, a ‘plaintiff may meet the burden of proving that exposure to defendant's product was a substantial factor causing the illness by showing that in reasonable medical probability it was a substantial factor contributing to the plaintiff's or decedent's *risk* of developing cancer.’ ” (*Izell, supra*, 231 Cal.App.4th at p. 975, original italics, internal citation omitted.)
- “Many factors are relevant in assessing the medical probability that an exposure contributed to plaintiff’s asbestos disease. Frequency of exposure, regularity of exposure, and proximity of the asbestos product to plaintiff are certainly relevant, although these considerations should not be determinative in every case. [Citation.] Additional factors may also be significant in individual cases, such as the type of asbestos product to which plaintiff was exposed, the type of injury suffered by plaintiff, and other possible sources of plaintiff’s injury. [Citations.] ‘Ultimately, the sufficiency of the evidence of causation will depend on the unique circumstances of each case.’ [Citation.]” (*Paulus v. Crane Co.* (2014) 224 Cal.App.4th 1357, 1363–1364 [169 Cal.Rptr.3d 373].)
- “In this case, [defendant] argues the trial court's refusal to give its proposed instruction was error because the instruction set forth ‘the requirement in *Rutherford* that causation be decided by taking into account “the length, frequency, proximity and intensity of exposure, the peculiar properties of the individual product, [and] any other potential causes to which the disease could be attributed.” ’ But *Rutherford* does not require the jury to take these factors into account when deciding whether a plaintiff's exposure to an asbestos-containing product was a substantial factor in causing mesothelioma. Instead, those factors are ones that a medical expert may rely upon in forming his or her expert medical opinion.” (*Davis v. Honeywell Internat. Inc.* (2016) 245 Cal.App.4th 477, 495 [199 Cal.Rptr.3d 583], internal citation omitted.)
- “We disagree with the trial court's view that *Rutherford* mandates that a medical doctor must expressly link together the evidence of substantial factor causation. The *Rutherford* court did not create a requirement that specific words must be recited by appellant's expert. Nor did the *Rutherford* court specify that the testifying expert in asbestos cases must always be ‘somebody with an M.D. after his name.’ The *Rutherford* court agreed with the *Lineaweaver* court that ‘the reference to “medical probability” in the standard “is no more than a recognition that asbestos injury cases (like medical malpractice cases) involve the use of medical evidence.” [Citation.]’ The Supreme Court has since clarified that medical evidence does not necessarily have to be provided by a medical doctor.” (*Hernandez v. Amcord, Inc.* (2013) 215 Cal.App.4th 659, 675 [156 Cal.Rptr.3d 90], internal citations omitted.)
- “Nothing in *Rutherford* precludes a plaintiff from establishing legal causation through opinion testimony by a competent medical expert to the effect that every exposure to respirable asbestos contributes to the risk of developing mesothelioma. On the contrary, *Rutherford* acknowledges the scientific debate between the ‘every exposure’ and ‘insignificant exposure’ camps, and recognizes that the conflict is one for the jury to resolve.” (*Izell, supra*, 231 Cal.App.4th at p. 977.)

- “Nor is there a requirement that ‘specific words must be recited by [plaintiffs] expert.’ [¶] The connection, however, must be made between the defendant's asbestos products and the risk of developing mesothelioma suffered by the decedent.” (*Paulus, supra*, 224 Cal.App.4th at p. 1364.)

### ***Secondary Sources***

3 Witkin, *California Procedure* (5th ed. 2008) *Actions*, § 570

Haning et al., *California Practice Guide: Personal Injury*, Ch. 2(II)-D, *Theories of Recovery—Strict Liability For Defective Products*, ¶ 2:1259 (The Rutter Group)

Haning et al., *California Practice Guide: Personal Injury*, Ch. 2(II)-O, *Theories of Recovery—Causation Issues*, ¶ 2:2409 (The Rutter Group)

1 Levy et al., *California Torts*, Ch. 2, *Causation*, § 2.03 (Matthew Bender)

*California Products Liability Actions*, Ch. 2, *Liability for Defective Products*, § 2.22, Ch. 7, *Proof*, § 7.06 (Matthew Bender)

33 *California Forms of Pleading and Practice*, Ch. 380, *Negligence*, § 380.72 (Matthew Bender)

**555. Affirmative Defense—Statute of Limitations—Medical Malpractice—One-Year Limit (Code Civ. Proc., § 340.5)**

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**[Name of defendant] contends that [name of plaintiff]’s lawsuit was not filed within the time set by law. To succeed on this defense, [name of defendant] must prove that before [insert date one year before date of filing], [name of plaintiff] discovered, or knew of facts that would have caused a reasonable person to suspect, that [he/she] had suffered harm that was caused by someone’s wrongful conduct.**

**[If, however, [name of plaintiff] proves [insert tolling provision(s) of general applicability, e.g., Code Civ. Proc., §§ 351 [absence from California], 352 [insanity], 352.1 [prisoners], 352.5 [restitution orders], 353.1 [court’s assumption of attorney’s practice], 354 [war], 356 [injunction]], the period within which [name of plaintiff] had to file the lawsuit is extended for the amount of time that [insert tolling provision, e.g., [name of defendant] was absent from California].]**

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*New April 2009*

**Directions for Use**

Use CACI No. 556, *Affirmative Defense—Statute of Limitations—Medical Malpractice—Three-Year Limit*, if the three-year limitation provision is at issue.

If the notice of intent to sue required by Code of Civil Procedure section 364 is served within 90 days of the date on which the statute of limitations will run, the statute of limitations is tolled for 90 days beyond the end of the limitations period. (See Code Civ. Proc., § 364; *Woods v. Young* (1991) 53 Cal.3d 315, 325–326 [279 Cal.Rptr. 613, 807 P.2d 455].) Adjust the “date one year before the date of filing” in the instruction accordingly. If there is an issue of fact with regard to compliance with the requirements of section 364, the instruction may need to be modified accordingly.

Give the optional last paragraph if there is a question of fact concerning a tolling provision from the Code of Civil Procedure. If so, the verdict form should ask the jury to find (1) the “discovery” date (the date on which the plaintiff discovered or knew of facts that would have caused a reasonable person to suspect that he or she had suffered harm that was caused by someone’s wrongful conduct); (2) whether the tolling provision applies; and (3) if so, for what period of time. The court can then add the additional time to the discovery date and determine whether the action is timely.

Contrary to the otherwise applicable rule (see CACI No. 455, *Statute of Limitations—Delayed Discovery*), the defendant has been given the burden of proving that the plaintiff discovered or should have discovered the facts alleged to constitute the defendant’s wrongdoing more than one year before filing the action. (See *Samuels v. Mix* (1999) 22 Cal.4th 1, 8–10 [91 Cal.Rptr.2d 273, 989 P.2d 701] [construing structurally similar Code Civ. Proc., § 340.6, on legal malpractice, to place burden regarding delayed discovery on the defendant and disapproving *Burgon v. Kaiser Foundation Hospitals* (1979) 93 Cal.App.3d 813 [155 Cal.Rptr. 763], which had reached the opposite result under Code Civ. Proc., §

340.5].) See also CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit*.

### Sources and Authority

- Statutes of Limitation for Medical Malpractice. Code of Civil Procedure section 340.5.
- Notice of Intent to Commence Action. Code of Civil Procedure section 364(a).
- 90-Day Extension of Limitation Period. Code of Civil Procedure section 364(d).
- “The one-year limitation period of section 340.5 is a codification of the discovery rule, under which a cause of action accrues when the plaintiff is aware, or reasonably should be aware, of ‘injury,’ a term of art which means ‘both the negligent cause and the damaging effect of the alleged wrongful act.’ ” (*Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 290 [170 Cal.Rptr.3d 125].)
- “When a plaintiff has information which would put a reasonable person on inquiry, when a plaintiff’s ‘reasonably founded suspicions [have been] aroused’ and the plaintiff has ‘become alerted to the necessity for investigation and pursuit of her remedies,’ the one-year period commences. ‘Possession of ‘presumptive’ as well as ‘actual’ knowledge will commence the running of the statute.’ ” (*Dolan v. Borelli* (1993) 13 Cal.App.4th 816, 823 [16 Cal.Rptr.2d 714], internal citations omitted.)
- “We see no reason to apply the second sentence of section 340.5 to the one-year period it does not mention, in addition to the three-year period it does mention. The general purpose of MICRA does not require us to expand that sentence beyond its language.” (*Belton v. Bowers Ambulance Serv.* (1999) 20 Cal.4th 928, 934 [86 Cal.Rptr.2d 107, 978 P.2d 591] [Code Civ. Proc., § 352.1, which tolls statutes of limitation for prisoners, applies to extend one-year period of Code Civ. Proc., § 340.5].)
- “The implications of *Belton’s* analysis for our case here is inescapable. Like tolling the statute of limitations for confined prisoners under section 352.1, tolling under section 351 for a defendant’s absence from California is of general applicability [and therefore extends the one-year period of Code of Civil Procedure section 340.5]. (For other general tolling provisions, see § 352 [minors or insanity]; § 352.5 [restitution orders]; § 353.1 [court’s assumption of attorney’s practice]; § 354 [war]; § 356 [injunction].)” (*Kaplan v. Mamelak* (2008) 162 Cal.App.4th 637, 643 [75 Cal.Rptr.3d 861].)
- “[A] plaintiff’s minority as such does not toll the limitations period of section 340.5. When the Legislature added the separate statute of limitations for minors to section 340.5 in 1975, it clearly intended that the general provision for tolling of statutes of limitation during a person’s minority (§ 352, subd. (a)(1)) should no longer apply to medical malpractice actions.” (*Steketee v. Lintz* (1985) 38 Cal.3d 46, 53 [210 Cal.Rptr 781, 694 P.2d 1153], internal citations omitted.)
- “Section 340.5 creates two separate statutes of limitations, both of which must be satisfied if a plaintiff is to timely file a medical malpractice action. First, the plaintiff must file within one year after she first ‘discovers’ the injury *and the negligent cause* of that injury. Secondly, she must file within three years after she first experiences harm from the injury. This means that if a plaintiff does not ‘discover’ the negligent cause of her injury until more than three years after she first experiences

harm from the injury, she will not be able to bring a malpractice action against the medical practitioner or hospital whose malpractice caused her injury.” (*Ashworth v. Mem'l Hosp.* (1988) 206 Cal.App.3d 1046, 1054 [254 Cal.Rptr. 104], original italics.)

- “That legislative purpose [re: Code Civ. Proc., § 364] is best effectuated by construing section 364(d) as tolling the one-year statute of limitations when section 364(a)'s ninety-day notice of intent to sue is served during, but not before, the last ninety days of the one-year limitations period. Because the statute of limitations is tolled for 90 days and not merely extended by 90 days from the date of service of the notice, this construction results in a period of 1 year and 90 days in which to file the lawsuit. In providing for a waiting period of at least 90 days before suit can be brought, this construction achieves the legislative objective of encouraging negotiated resolutions of disputes.” (*Woods, supra*, 53 Cal.3d at p. 325.)
- “[I]f the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5. But section 340.5 does not extend to negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical care to a patient.” (*Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 88 [201 Cal.Rptr.3d 449, 369 P.3d 229].)
- “[W]hile MICRA is not limited to suits by patients, it ‘applies only to actions alleging injury suffered as a result of negligence in . . . the provision of medical care to patients.’ Driving to an accident victim is not the same as providing medical care to the victim. A paramedic's exercise of due care while driving is not ‘necessary or otherwise integrally related to the medical treatment and diagnosis of the patient’, at least when the patient is not in the vehicle.’ ” (*Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, 8 [205 Cal.Rptr.3d 719], internal citations omitted.)

### Secondary Sources

Haning, et al., California Practice Guide: Personal Injury, Ch. 1-B, *Initial Evaluation Of Case: Decision To Accept Or Reject Employment Or Undertake Further Evaluation Of Claim*, ¶ 1:67.1 (The Rutter Group)

Haning, et al., California Practice Guide: Personal Injury, Ch. 5-B, *When To Sue—Statute Of Limitations*, ¶ 5:109 (The Rutter Group)

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 9.26, 9.67–9.72

3 Levy et al., California Torts, Ch. 31, *Liability of Physicians and Other Medical Professionals*, § 31.60 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 415, *Physicians: Medical Malpractice*, § 415.47 (Matthew Bender)



17 California Points and Authorities, Ch. 175, *Physicians and Surgeons: Medical Malpractice*, § 175.45 et seq. (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions*, 4.27

| ~~+McDonald~~, *California Medical Malpractice: Law and Practice*, §§ 7:1–7:7 (Thomson Reuters)

**556. Affirmative Defense—Statute of Limitations—Medical Malpractice—Three-Year Limit (Code Civ. Proc., § 340.5)**

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**[Name of defendant] contends that [name of plaintiff]’s lawsuit was not filed within the time set by law. To succeed on this defense, [name of defendant] must prove that [name of plaintiff]’s alleged injury occurred before [insert date three years before date of filing].**

**[If, however, [name of plaintiff] proves**

**[Choose one or more of the following options:]**

**[that [he/she/it] did not discover the alleged wrongful act or omission because [name of defendant] acted fraudulently[,/; or]]**

**[that [name of defendant] intentionally concealed facts constituting the wrongful act or omission[,/; or]]**

**[that the alleged wrongful act or omission involved the presence of an object that had no therapeutic or diagnostic purpose or effect in [name of plaintiff]’s body[,/;]]**

**the period within which [name of plaintiff] had to file the lawsuit is extended for the amount of time that [insert tolling provision, e.g., [name of defendant] intentionally concealed the facts].]**

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*New April 2009*

**Directions for Use**

Use CACI No. 555, *Affirmative Defense—Statute of Limitations—Medical Malpractice—One-Year Limit*, if the one-year limitation provision is at issue.

If no tolling provision from Code of Civil Procedure section 340.5 is at issue, read only the first paragraph. Read the rest of the instruction if there is a question of fact concerning a tolling provision. If so, the verdict form should ask the jury to find (1) the date on which the alleged injury occurred; (2) whether the tolling provision applies; and (3) if so, for what period of time. The court can then add the additional time to the date of injury and determine whether the action is timely.

If the notice of intent to sue required by Code of Civil Procedure section 364 is served within 90 days of the date on which the statute of limitations will run, the statute of limitations is tolled for 90 days beyond the end of the limitation period. (See Code Civ. Proc., § 364; *Russell v. Stanford Univ. Hosp.* (1997) 15 Cal.4th 783, 789–790 [64 Cal.Rptr.2d 97, 937 P.2d 640].) If there is an issue of fact with regard to compliance with the requirements of section 364, the instruction may need to be modified accordingly.

**Sources and Authority**

- Three-Year Limitation Period for Medical Malpractice. Code of Civil Procedure section 340.5.

- “No tolling provision outside of MICRA can extend the three-year maximum time period that section 340.5 establishes.” (*Belton v. Bowers Ambulance Serv.* (1999) 20 Cal.4th 928, 931 [86 Cal.Rptr.2d 107, 978 P.2d 591]; see also *Fogarty v. Superior Court* (1981) 117 Cal.App.3d 316, 319–321 [172 Cal.Rptr. 594] [Code Civ. Proc., § 352 does not toll statute for insanity].)
- “The three-year limitations period of section 340.5 provides an outer limit which terminates all malpractice liability and it commences to run when the patient is aware of the physical manifestation of her injury without regard to awareness of the negligent cause.” (*Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 760 [199 Cal.Rptr. 816].)
- “Section 340.5 creates two separate statutes of limitations, both of which must be satisfied if a plaintiff is to timely file a medical malpractice action. First, the plaintiff must file within one year after she first ‘discovers’ the injury *and the negligent cause* of that injury. Secondly, she must file within three years after she first experiences harm from the injury. This means that if a plaintiff does not ‘discover’ the negligent cause of her injury until more than three years after she first experiences harm from the injury, she will not be able to bring a malpractice action against the medical practitioner or hospital whose malpractice caused her injury.” (*Ashworth v. Mem'l Hosp.* (1988) 206 Cal.App.3d 1046, 1054 [254 Cal.Rptr. 104], original italics.)
- “The same considerations of legislative intent that compelled us, in [*Woods v. Young* (1991) 53 Cal.3d 315, 325–326 [279 Cal.Rptr. 613, 807 P.2d 455]], to construe Code of Civil Procedure section 364, subdivision (d), as ‘tolling’ the one-year limitations period also apply to the three-year limitation. Unless the limitations period is so construed, the legislative purpose of reducing the cost and increasing the efficiency of medical malpractice litigation by, among other things, encouraging negotiated resolution of disputes will be frustrated. Moreover, a plaintiff’s attorney who gives notice within the last 90 days of the 3-year limitations period will confront the dilemma we addressed in *Woods*, i.e., a choice between preserving the plaintiff’s cause of action by violating the 90-day notice period under Code of Civil Procedure section 364, subdivision (d)--thereby invoking potential disciplinary proceedings by the State Bar--and forfeiting the client’s cause of action. In the absence of tolling, the practical effect of the statute would be to shorten the statutory limitations period from three years to two years and nine months. As in the case of the one-year limitation, we discern no legislative intent to do so.” (*Russell, supra*, 15 Cal.4th at pp. 789–790.)
- “[T]he ‘no therapeutic or diagnostic purpose or effect’ qualification in section 340.5 means the foreign body exception does not apply to objects and substances intended to be permanently implanted, but items temporarily placed in the body as part of a procedure and meant to be removed at a later time do come within it.” (*Maier v. County of Alameda* (2014) 223 Cal.App.4th 1340, 1352 [168 Cal.Rptr.3d 56].)
- “[I]f the act or omission that led to the plaintiff’s injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff’s claim is one of professional negligence under section 340.5. But section 340.5 does not extend to negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical

care to a patient.” (Flores v. Presbyterian Intercommunity Hospital (2016) 63 Cal.4th 75, 88 [201 Cal.Rptr.3d 449, 369 P.3d 229].)

- “[W]hile MICRA is not limited to suits by patients, it ‘applies only to actions alleging injury suffered as a result of negligence in . . . the provision of medical care to patients.’ Driving to an accident victim is not the same as providing medical care to the victim. A paramedic’s exercise of due care while driving is not ‘necessary or otherwise integrally related to the medical treatment and diagnosis of the patient’ (ibid.), at least when the patient is not in the vehicle. . . .” (Aldana v. Stillwagon (2016) 2 Cal.App.5th 1, 8 [205 Cal.Rptr.3d 719], internal citations omitted.)

### **Secondary Sources**

Haning et al., California Practice Guide: Personal Injury, Ch. 1-B, First Steps in Handling a Personal Injury Case—Initial Evaluation of Case: Decision to Accept or Reject Employment or Undertake Further Evaluation of Claim, ¶¶ 1:67.1 (The Rutter Group)

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 9.26, 9.67–9.72

4 Levy et al., California Torts, Ch. 31, *Liability of Physicians and Other Medical Professionals*, § 31.60 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 415, *Physicians: Medical Malpractice*, § 415.47 (Matthew Bender)

17 California Points and Authorities, Ch. 175, *Physicians and Surgeons: Medical Malpractice*, § 175.45 et seq. (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions*, 4.27

1-McDonald, California Medical Malpractice: Law and Practice, §§ 7:1–7:7 (Thomson Reuters)

**610. Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit (Code Civ. Proc., § 340.6)**

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[*Name of defendant*] contends that [*name of plaintiff*]’s lawsuit was not filed within the time set by law. To succeed on this defense, [*name of defendant*] must prove that before [*insert date one year before date of filing*] [*name of plaintiff*] knew, or with reasonable diligence should have discovered, the facts of [*name of defendant*]’s alleged wrongful act or omission.

[If, however, [*name of plaintiff*] proves

[Choose one or more of the following three options:]

[that [he/she/it] did not sustain actual injury until on or after [*insert date one year before date of filing*][, /; or]]

[that on or after [*insert date one year before date of filing*] [*name of defendant*] continued to represent [*name of plaintiff*] regarding the specific subject matter in which the wrongful act or omission occurred[, /; or]]

[that on or after [*insert date one year before date of filing*] [he/she/it] was under a legal or physical disability that restricted [his/her/its] ability to file a lawsuit[, /;]]

the period within which [*name of plaintiff*] had to file the lawsuit is extended for the amount of time that [*insert tolling provision, e.g., [name of defendant] continued to represent [name of plaintiff]*].]

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*New April 2007; Revised April 2009*

**Directions for Use**

Use CACI No. 611, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—Four-Year Limit*, if the four-year limitation provision is at issue.

The court may need to define the term “actual injury” depending on the facts and circumstances of the particular case.

If no tolling provision from Code of Civil Procedure section 340.6 is at issue, read only through the end of the first paragraph. Read the rest of the instruction if there is a question of fact concerning a tolling provision. If so, the verdict form should ask the jury to find (1) the “discovery” date (the date on which the plaintiff discovered or knew of facts that would have caused a reasonable person to suspect that he or she had suffered harm that was caused by someone’s wrongful conduct); (2) whether the tolling provision applies; and (3) if so, for what period of time. The court can then add the additional time to the discovery date and determine whether the action is timely.

**Sources and Authority**

- Statute of Limitation for Attorney Malpractice. Code of Civil Procedure section 340.6.
- Persons Under Disabilities. Code of Civil Procedure section 352.
- “Under section 340.6, the one-year limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but the period is tolled until the plaintiff sustains actual injury. That is to say, the statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence.” (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 751 [76 Cal.Rptr.2d 749, 958 P.2d 1062].)
- “Actual injury refers only to the legally cognizable damage necessary to assert the cause of action. There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney's error and the asserted injury. The determination of actual injury requires only a factual analysis of the claimed error and its consequences. The inquiry necessarily is more qualitative than quantitative because the fact of damage, rather than the amount, is the critical factor.” (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 113 [103 Cal.Rptr.3d 811].)
- “ ‘[S]ection 340.6, subdivision (a)(1), will not toll the limitations period once the client can plead damages that could establish a cause of action for legal malpractice.’ ‘[T]he limitations period is not tolled after the plaintiff sustains actual injury [even] if the injury is, in some sense, remediable. [Citation.] Furthermore, the statutory scheme does not depend on the plaintiff's recognizing actual injury. Actual injury must be noticeable, but the language of the tolling provision does not require that it be noticed.’ On the other hand, ‘the statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence’ because the plaintiff cannot allege actual injury resulted from an attorney's malpractice.” (*Croucier v. Chavos* (2012) 207 Cal.App.4th 1138, 1148 [144 Cal.Rptr.3d 180], internal citations omitted.)
- “[A]ctual injury exists even if the client has yet to ‘sustain[] all, or even the greater part, of the damages occasioned by his attorney's negligence’; even if the client will encounter ‘difficulty in proving damages’; and even if that damage might be mitigated or entirely eliminated in the future. [¶] However, ‘actual injury’ does not include ‘speculative and contingent injuries ... that do not yet exist ... .’ ” (*Shaoxing City Maolong Wuzhong Down Products, Ltd. v. Keehn & Associates, APC* (2015) 238 Cal.App.4th 1031, 1036 [190 Cal.Rptr.3d 90], internal citations omitted.)
- “[B]ecause ‘determining actual injury is predominately a factual inquiry’ to the extent a question remains on this point, the matter is properly resolved by the trier of fact ... .” (*Callahan v. Gibson, Dunn & Crutcher LLP* (2011) 194 Cal.App.4th 557, 576 [125 Cal.Rptr.3d 120].)
- “[W]here, as here, the ‘material facts are undisputed, the trial court can resolve the matter [of actual injury] as a question of law in conformity with summary judgment principles.’ ” (*Shaoxing City Maolong Wuzhong Down Products, Ltd., supra*, 238 Cal.App.4th at pp. 1037–1038.)
- “[P]rior to the enactment of section 340.6 the running of the statute of limitations coincided with accrual of the plaintiff's malpractice cause of action, including damages. By contrast, under the provisions of section 340.6, discovery of the negligent act or omission initiates the statutory period,

and the absence of injury or damages serves as a tolling factor.” (*Adams v. Paul* (1995) 11 Cal.4th 583, 589, fn. 2 [46 Cal.Rptr.2d 594, 904 P.2d 1205], internal citations omitted.)

- “[A] defendant must prove the facts necessary to enjoy the benefit of a statute of limitations.” (*Samuels v. Mix* (1999) 22 Cal.4th 1, 10 [91 Cal.Rptr.2d 273, 989 P.2d 701], internal citations omitted.)
- “[D]efendant, if he is to avail himself of the statute’s one-year-from-discovery limitation defense, has the burden of proving, under the ‘traditional allocation of the burden of proof’ that plaintiff discovered or should have discovered the facts alleged to constitute defendant’s wrongdoing more than one year prior to filing this action.” (*Samuels, supra*, 22 Cal.4th at pp. 8–9, internal citations omitted.)
- “In ordinary tort and contract actions, the statute of limitations, it is true, begins to run upon the occurrence of the last element essential to the cause of action. The plaintiff’s ignorance of the cause of action, or of the identity of the wrongdoer, does not toll the statute. In cases of professional malpractice, however, postponement of the period of limitations until discovery finds justification in the special nature of the relationship between the professional man and his client.” (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187–188 [98 Cal.Rptr. 837, 491 P.2d 421], footnote omitted.)
- “We hold that a cause of action for legal malpractice does not accrue until the client discovers, or should discover, the facts establishing the elements of his cause of action.” (*Neel, supra*, 6 Cal.3d at p. 194.)
- “‘[W]here there is a professional relationship, the degree of diligence in ferreting out the negligence for the purpose of the statute of limitations is diminished. [Citation.]’ ” (*Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 315 [166 Cal.Rptr.3d 116].)
- “If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. Hence, until the client suffers appreciable harm as a consequence of his attorney’s negligence, the client cannot establish a cause of action for malpractice.” (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200 [98 Cal.Rptr. 849, 491 P.2d 433], internal citations omitted.)
- “A plaintiff who is aware of, and has been actually injured by, attorney malpractice in a matter need not file suit for malpractice while that attorney is still representing him on the same ‘specific subject matter.’ ” (*Shaoming City Maolong Wuzhong Down Products, Ltd., supra*, 238 Cal.App.4th at p. 1038.)
- “The continuous representation tolling provision in section 340.6, subdivision (a)(2) ‘was adopted in order to ‘avoid the disruption of an attorney-client relationship by a lawsuit while enabling the attorney to correct or minimize an apparent error, and to prevent an attorney from defeating a malpractice cause of action by continuing to represent the client until the statutory period has expired.’ ” (*Kelly v. Orr* (2016) 243 Cal.App.4th 940, 950 [196 Cal.Rptr.3d 901].)

- “The mere existence of an attorney-client relationship does not trigger the continuous representation rule: ‘Instead, the statute’s tolling language addresses a particular phase of such a relationship-representation regarding a *specific subject matter*. Moreover, the limitations period is not tolled when an attorney’s subsequent role is only tangentially related to the legal representation the attorney provided to the plaintiff. Therefore, “[t]he *inquiry is not whether an attorney-client relationship still exists but when the representation of the specific matter terminated.*” ’ Tolling does not apply where there is a continuing relationship between the attorney and client ‘involving only unrelated matters.’ ” (*Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1064 [109 Cal.Rptr.3d 392], original italics, internal citations omitted.)
- “[W]here a client hires a law firm to represent it, the provisions of section 340.6 apply to that firm; the term ‘attorney’ in section 340.6 may embrace the entire partnership, law corporation, or other legal entity the client retains. [¶] That either an attorney or a firm may be the subject of an action does not support a reading under which representation by one attorney or firm might toll the limitations period as to another no longer affiliated attorney or firm. Rather, the text implies an action against a law firm is tolled so long as *that firm* continues representation, just as an action against an attorney is tolled so long as *that attorney* continues representation, but representation by one attorney or firm does not toll claims that may exist against a different, unaffiliated attorney or firm.” (*Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 509 [66 Cal.Rptr.3d 52, 167 P.3d 666], original italics.)
- “ ‘[W]hen an attorney leaves a firm and takes a client with him or her, ... the tolling in ongoing matters [does not] continue for claims against the former firm and partners.’ ” (*Stueve Bros. Farms, LLC, supra*, 222 Cal.App.4th at p. 314.)
- “ ‘Ordinarily, an attorney’s representation is not completed until the agreed tasks or events have occurred, the client consents to termination or a court grants an application by counsel for withdrawal.’ ‘The rule is that, for purposes of the statute of limitations, the attorney’s representation is concluded when the parties so agree, and that result does not depend upon formal termination, such as withdrawing as counsel of record.’ ‘Continuity of representation ultimately depends, not on the client’s subjective beliefs, but rather on evidence of an ongoing mutual relationship and of activities in furtherance of the relationship.’ ” (*Nielsen v. Beck* (2007) 157 Cal.App.4th 1041, 1049 [69 Cal.Rptr.3d 435], internal citations omitted.)
- “[T]he continuous representation tolling provision in section 340.6, subdivision (a)(2), applies to toll legal malpractice claims brought by successor trustees against attorneys who represented the predecessor trustee.” (*Kelly, supra*, 243 Cal.App.4th at p. 951.)
- “[A]bsent a statutory standard to determine when an attorney’s representation of a client regarding a specific subject matter ends, and consistent with the purposes of the continuing representation rule, we conclude that for purposes of ... section 340.6, subdivision (a)(2), in the event of an attorney’s unilateral withdrawal or abandonment of the client, the representation ends *when the client actually has or reasonably should have no expectation that the attorney will provide further legal services.* ... That may occur upon the attorney’s express notification to the client that the attorney will perform no further services, or, if the attorney remains silent, may be inferred from the circumstances. *Absent*



*actual notice to the client that the attorney will perform no further legal services or circumstances that reasonably should cause the client to so conclude*, a client should be entitled to rely on an attorney to perform the agreed services and should not be required to interrupt the attorney-client relationship by filing a malpractice complaint. *After a client has no reasonable expectation that the attorney will provide further legal services*, however, the client is no longer hindered by a potential disruption of the attorney-client relationship and no longer relies on the attorney's continuing representation, so the tolling should end. To this extent and for these reasons, *we conclude that continuous representation should be viewed objectively from the client's perspective ...*” (*Laclette v. Galindo* (2010) 184 Cal.App.4th 919, 928 [109 Cal.Rptr.3d 660], original italics.)

- “Section 340.6, subdivision (a), states that ‘in no event’ shall the prescriptive period be tolled except under those circumstances specified in the statute. Thus, the Legislature expressly intended to disallow tolling under any circumstances not enumerated in the statute.” (*Laird v. Blacker* (1992) 2 Cal.4th 606, 618 [7 Cal.Rptr.2d 550, 828 P.2d 691] [applying rule to one-year limitation period]; cf. *Belton v. Bowers Ambulance Serv.* (1999) 20 Cal.4th 928, 934 [86 Cal.Rptr.2d 107, 978 P.2d 591] [substantially similar language in Code Civ. Proc., § 340.5, applicable to medical malpractice, construed to apply only to three-year limitation period].)
- “[T]he fourth tolling provision of section 340.6, subdivision (a)—that is, the provision applicable to legal and physical disabilities—encompasses the circumstances set forth in section 351 [exception, where defendant is out of the state].” (*Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 569 [107 Cal.Rptr.3d 539].)
- “In light of the Legislature's intent that section 340.6(a) cover more than claims for legal malpractice, the term ‘professional services’ is best understood to include nonlegal services governed by an attorney's professional obligations.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1237 [191 Cal.Rptr.3d 536, 354 P.3d 334].)
- “For purposes of section 340.6(a), the question is not simply whether a claim alleges misconduct that entails the violation of a professional obligation. Rather, the question is whether the claim, in order to succeed, necessarily depends on proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation.” (*Lee, supra*, 61 Cal.4th at p. 1238.)

### **Secondary Sources**

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 573, 626–655

3 Levy et al., California Torts, Ch. 32, *Liability of Attorneys*, § 32.60 (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions*, 4.05

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, §§ 76.170, 76.430 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.150 (Matthew Bender)

**611. Affirmative Defense—Statute of Limitations—Attorney Malpractice—Four-Year Limit  
(Code Civ. Proc., § 340.6)**

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**[Name of defendant] contends that [name of plaintiff]’s lawsuit was not filed within the time set by law. To succeed on this defense, [name of defendant] must prove that [his/her/its] alleged wrongful act or omission occurred before [insert date four years before date of filing].**

**[If, however, [name of plaintiff] proves**

**[Choose one or more of the following four options:]**

**[that [he/she/it] did not sustain actual injury until on or after [insert date four years before date of filing]][, /; or]**

**[that on or after [insert date four years before date of filing] [name of defendant] continued to represent [name of plaintiff] regarding the specific subject matter in which the wrongful act or omission occurred[, /; or]**

**[that on or after [insert date four years before date of filing] [name of defendant] knowingly concealed the facts constituting the wrongful act or omission[, /; or]**

**[that on or after [insert date four years before date of filing] [he/she/it] was under a legal or physical disability that restricted [his/her/its] ability to file a lawsuit[, /;]**

**the period within which [name of plaintiff] had to file the lawsuit is extended for the amount of time that [insert tolling provision, e.g., [name of defendant] knowingly concealed the facts].**

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*New April 2007; Revised April 2009*

**Directions for Use**

Use CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit*, if the one-year limitation provision is at issue.

If no tolling provision from Code of Civil Procedure section 340.6 is at issue, read only through the end of the first paragraph. Read the rest of the instruction if there is a question of fact concerning a tolling provision. If so, the verdict form should ask the jury to find (1) the date on which the alleged wrongful act or omission occurred; (2) whether the tolling provision applies; and (3) if so, for what period of time. The court can then add the additional time to the date on which the alleged wrongful act or omission occurred and determine whether the action is timely.

The court may need to define the term “actual injury” depending on the facts and circumstances of the particular case.

### Sources and Authority

- Statute of Limitation for Attorney Malpractice. Code of Civil Procedure section 340.6.
- Persons Under Disabilities. Code of Civil Procedure section 352.
- “Under section 340.6, the one-year limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but the period is tolled until the plaintiff sustains actual injury. That is to say, the statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence.” (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 751 [76 Cal.Rptr.2d 749, 958 P.2d 1062].)
- “Actual injury refers only to the legally cognizable damage necessary to assert the cause of action. There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney's error and the asserted injury. The determination of actual injury requires only a factual analysis of the claimed error and its consequences. The inquiry necessarily is more qualitative than quantitative because the fact of damage, rather than the amount, is the critical factor.” (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 113 [103 Cal.Rptr.3d 811].)
- “ ‘[S]ection 340.6, subdivision (a)(1), will not toll the limitations period once the client can plead damages that could establish a cause of action for legal malpractice.’ ‘[T]he limitations period is not tolled after the plaintiff sustains actual injury [even] if the injury is, in some sense, remediable. [Citation.] Furthermore, the statutory scheme does not depend on the plaintiff's recognizing actual injury. Actual injury must be noticeable, but the language of the tolling provision does not require that it be noticed.’ On the other hand, ‘the statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence’ because the plaintiff cannot allege actual injury resulted from an attorney’s malpractice.” (*Croucier v. Chavos* (2012) 207 Cal.App.4th 1138, 1148 [144 Cal.Rptr.3d 180], internal citations omitted.)
- “[A]ctual injury exists even if the client has yet to ‘sustain[] all, or even the greater part, of the damages occasioned by his attorney's negligence’; even if the client will encounter ‘difficulty in proving damages’; and even if that damage might be mitigated or entirely eliminated in the future. [¶] However, ‘actual injury’ does not include ‘speculative and contingent injuries ... that do not yet exist ... .’ ” (*Shaoxing City Maolong Wuzhong Down Products, Ltd. v. Keehn & Associates, APC* (2015) 238 Cal.App.4th 1031, 1036 [190 Cal.Rptr.3d 90], internal citations omitted.)
- “[B]ecause ‘determining actual injury is predominately a factual inquiry’ to the extent a question remains on this point, the matter is properly resolved by the trier of fact ... .” (*Callahan v. Gibson, Dunn & Crutcher LLP* (2011) 194 Cal.App.4th 557, 576 [125 Cal.Rptr.3d 120].)
- “[W]here, as here, the ‘material facts are undisputed, the trial court can resolve the matter [of actual injury] as a question of law in conformity with summary judgment principles.’ ” (*Shaoxing City Maolong Wuzhong Down Products, Ltd., supra*, 238 Cal.App.4th at pp. 1037–1038.)

- “[P]rior to the enactment of section 340.6 the running of the statute of limitations coincided with accrual of the plaintiff’s malpractice cause of action, including damages. By contrast, under the provisions of section 340.6, discovery of the negligent act or omission initiates the statutory period, and the absence of injury or damages serves as a tolling factor.” (*Adams v. Paul* (1995) 11 Cal.4th 583, 598 fn. 2 [46 Cal.Rptr.2d 594, 904 P.2d 1205], internal citations omitted.)
- “[A] defendant must prove the facts necessary to enjoy the benefit of a statute of limitations.” (*Samuels v. Mix* (1999) 22 Cal.4th 1, 10 [91 Cal.Rptr.2d 273, 989 P.2d 701], internal citations omitted.)
- “In ordinary tort and contract actions, the statute of limitations, it is true, begins to run upon the occurrence of the last element essential to the cause of action. The plaintiff’s ignorance of the cause of action, or of the identity of the wrongdoer, does not toll the statute. In cases of professional malpractice, however, postponement of the period of limitations until discovery finds justification in the special nature of the relationship between the professional man and his client.” (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187–188 [98 Cal.Rptr. 837, 491 P.2d 421], footnote omitted.)
- “If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. Hence, until the client suffers appreciable harm as a consequence of his attorney’s negligence, the client cannot establish a cause of action for malpractice.” (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200 [98 Cal.Rptr. 849, 491 P.2d 433], internal citations omitted.)
- “A plaintiff who is aware of, and has been actually injured by, attorney malpractice in a matter need not file suit for malpractice while that attorney is still representing him on the same ‘specific subject matter.’ ” (*Shaoxing City Maolong Wuzhong Down Products, Ltd., supra*, 238 Cal.App.4th at p. 1038.)
- “The continuous representation tolling provision in section 340.6, subdivision (a)(2) ‘was adopted in order to “avoid the disruption of an attorney-client relationship by a lawsuit while enabling the attorney to correct or minimize an apparent error, and to prevent an attorney from defeating a malpractice cause of action by continuing to represent the client until the statutory period has expired.” ’ ” (*Kelly v. Orr* (2016) 243 Cal.App.4th 940, 950 [196 Cal.Rptr.3d 901].)
- “The mere existence of an attorney-client relationship does not trigger the continuous representation rule: ‘Instead, the statute’s tolling language addresses a particular phase of such a relationship—representation regarding a *specific subject matter*. Moreover, the limitations period is not tolled when an attorney’s subsequent role is only tangentially related to the legal representation the attorney provided to the plaintiff. Therefore, “[t]he *inquiry is not whether an attorney-client relationship still exists but when the representation of the specific matter terminated.*’ ” Tolling does not apply where there is a continuing relationship between the attorney and client ‘involving only unrelated matters.’ ” (*Lockton v. O’Rourke* (2010) 184 Cal.App.4th 1051, 1064 [109 Cal.Rptr.3d 392], original italics, internal citations omitted.)

- “[W]here a client hires a law firm to represent it, the provisions of section 340.6 apply to that firm; the term ‘attorney’ in section 340.6 may embrace the entire partnership, law corporation, or other legal entity the client retains. [¶] That either an attorney or a firm may be the subject of an action does not support a reading under which representation by one attorney or firm might toll the limitations period as to another no longer affiliated attorney or firm. Rather, the text implies an action against a law firm is tolled so long as *that firm* continues representation, just as an action against an attorney is tolled so long as *that attorney* continues representation, but representation by one attorney or firm does not toll claims that may exist against a different, unaffiliated attorney or firm.” (*Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 509 [66 Cal.Rptr.3d 52, 167 P.3d 666], original italics.)
- “[W]hen an attorney leaves a firm and takes a client with him or her, ... the tolling in ongoing matters [does not] continue for claims against the former firm and partners.’ ” (*Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 314 [166 Cal.Rptr.3d 116].)
- “ ‘Ordinarily, an attorney’s representation is not completed until the agreed tasks or events have occurred, the client consents to termination or a court grants an application by counsel for withdrawal.’ ‘The rule is that, for purposes of the statute of limitations, the attorney’s representation is concluded when the parties so agree, and that result does not depend upon formal termination, such as withdrawing as counsel of record.’ ‘Continuity of representation ultimately depends, not on the client’s subjective beliefs, but rather on evidence of an ongoing mutual relationship and of activities in furtherance of the relationship.’ ” (*Nielsen v. Beck* (2007) 157 Cal.App.4th 1041, 1049 [69 Cal.Rptr.3d 435], internal citations omitted.)
- “[T]he continuous representation tolling provision in section 340.6, subdivision (a)(2), applies to toll legal malpractice claims brought by successor trustees against attorneys who represented the predecessor trustee.” (*Kelly, supra*, 243 Cal.App.4th at p. 951.)
- “[A]bsent a statutory standard to determine when an attorney's representation of a client regarding a specific subject matter ends, and consistent with the purposes of the continuing representation rule, we conclude that for purposes of ... section 340.6, subdivision (a)(2), in the event of an attorney's unilateral withdrawal or abandonment of the client, the representation ends *when the client actually has or reasonably should have no expectation that the attorney will provide further legal services*. ... That may occur upon the attorney's express notification to the client that the attorney will perform no further services, or, if the attorney remains silent, may be inferred from the circumstances. *Absent actual notice to the client that the attorney will perform no further legal services or circumstances that reasonably should cause the client to so conclude*, a client should be entitled to rely on an attorney to perform the agreed services and should not be required to interrupt the attorney-client relationship by filing a malpractice complaint. *After a client has no reasonable expectation that the attorney will provide further legal services*, however, the client is no longer hindered by a potential disruption of the attorney-client relationship and no longer relies on the attorney's continuing representation, so the tolling should end. To this extent and for these reasons, *we conclude that continuous representation should be viewed objectively from the client's perspective ...*” (*Laclette v. Galindo* (2010) 184 Cal.App.4th 919, 928 [109 Cal.Rptr.3d 660], original italics.)

- “In light of the Legislature's intent that section 340.6(a) cover more than claims for legal malpractice, the term ‘professional services’ is best understood to include nonlegal services governed by an attorney's professional obligations.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1237 [191 Cal.Rptr.3d 536, 354 P.3d 334].)
- “For purposes of section 340.6(a), the question is not simply whether a claim alleges misconduct that entails the violation of a professional obligation. Rather, the question is whether the claim, in order to succeed, necessarily depends on proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation.” (*Lee, supra*, 61 Cal.4th at p. 1238.)

### ***Secondary Sources***

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 573, 626–655

3 Levy et al., California Torts, Ch. 32, *Liability of Attorneys*, § 32.60 (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions*, 4.05

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, §§ 76.170, 76.430 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.150 (Matthew Bender)

**1110. Affirmative Defense—Natural Conditions (Gov. Code, § 831.2)**

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**A public entity is not responsible for harm caused by a natural condition of an unimproved public property. If [name of defendant] proves that [name of plaintiff]’s injury was caused by such a condition, then it is not responsible for the injury.**

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*New September 2003*

**Sources and Authority**

- Natural Condition of Unimproved Public Property. Government Code section 831.2.
- Public Beaches. Government Code section 831.21.
- “The immunity provided by section 831.2 is absolute and applies regardless of whether the public entity had knowledge of the dangerous condition or failed to give warning. The legislative purpose in enacting section 831.2 was to ensure that public entities will not prohibit public access to recreational areas due to the burden and expense of defending against personal injury suits and of placing such land in a safe condition.” (*Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 360 [196 Cal.Rptr.3d 625 ], internal citations omitted.)
- “The natural condition immunity applies even ‘where the public entity had knowledge of a dangerous condition which amounted to a hidden trap.’ As a consequence, courts have held there is no liability for failure to warn of a known dangerous condition when the danger is a natural condition of unimproved public property.” (*Alana M. v. State of California* (2016) 245 Cal.App.4th 1482, 1488 [200 Cal.Rptr.3d 410], internal citation omitted.)
- “The statutory immunity extends to ‘an injury *caused* by a natural condition of any unimproved public property.’ The use of the term ‘caused’ is significant. Here, although the injury *occurred* on improved property, that is, the paved parking lot, it was *caused* by the trees, native flora located near—and perhaps superadjacent to—the improved parking lot, but themselves on unimproved property.” (*Meddock v. County of Yolo* (2013) 220 Cal.App.4th 170, 177 [162 Cal.Rptr.3d 796], original italics, footnote and internal citations omitted.)
- “[T]o qualify public property as *improved* so as to take it outside the immunity statute ‘some form of physical change in the condition of the property *at the location of the injury*, which justifies the conclusion that the public entity is responsible for reasonable risk management in that area, [is] required to preclude application of the immunity.’ ” (*Meddock, supra*, 220 Cal.App.4th at p. 178 [162 Cal.Rptr.3d 796], original italics.)
- “It is also the rule that ‘improvement of a portion of a park area does not remove the immunity from the unimproved areas.’ ‘The reasonableness of this rule is apparent. Otherwise, the immunity as to an entire park area improved in any way would be demolished. [Citation.] This would, in turn, seriously thwart accessibility and enjoyment of public lands by discouraging the construction of such

improvements as restrooms, fire rings, campsites, entrance gates, parking areas and maintenance buildings.’ ” (Alana M., supra, 245 Cal.App.4th at pp. 1488–1489[Improvement of a portion of a park does not remove the immunity from the unimproved areas.” (Meddock, supra, 220 Cal.App.4th at p. 178.)

- “It is now generally settled that human-altered conditions, especially those that have existed for some years, which merely duplicate models common to nature are still ‘natural conditions’ as a matter of law for the purposes of Government Code section 831.2.” (*Tessier v. City of Newport Beach* (1990) 219 Cal.App.3d 310, 314 [268 Cal.Rptr. 233].)
- “Immunity under section 831.2 exists even where the public entity's nearby improvements together with natural forces add to the buildup of sand on a public beach.” (*Morin v. County of Los Angeles* (1989) 215 Cal.App.3d 184, 188 [263 Cal.Rptr. 479].)
- “The statutory immunity is fully applicable to manmade lakes and reservoirs. Moreover, section 831.2 has been broadly construed to provide immunity even where a natural condition has been affected in some manner by human activity or nearby improvements.” (*Goddard, supra*, 243 Cal.App.4<sup>th</sup> at p. 361, internal citations omitted.)
- “The mere attachment of a rope on defendant’s undeveloped land by an unknown third party did not change the ‘natural condition’ of the land.” (*Kuykendall v. State of California* (1986) 178 Cal.App.3d 563, 566 [223 Cal.Rptr. 763].)
- “Essentially, [plaintiff]’s position is she was entitled to a campsite in the forest safe from falling trees, but this ‘is exactly the type of complaint section 831.2 was designed to protect public entities against.’ ” (Alana M., supra, 245 Cal.App.4th at p. 1493.)
- “Given the intent of the Legislature in enacting section 831.2, we hold that wild animals are a natural part of the condition of unimproved public property within the meaning of the statute.” (*Arroyo, supra*, 34 Cal.App.4th at p. 762.)

### **Secondary Sources**

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 250, 256

Haning, et al., California Practice Guide: Personal Injury, Ch. 2(III)-D, *Liability For “Dangerous Conditions” Of Public Property*, ¶ 2:2825 et seq. (The Rutter Group)

2 California Government Tort Liability Practice (Cont.Ed.Bar 4th ed.) §§ 12.82–12.87

5 Levy et al., California Torts, Ch. 61, *Particular Liabilities and Immunities of Public Entities and Public Employees*, § 61.03 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 464, *Public Entities and Officers: California Government Claims Act*, § 464.85 (Matthew Bender)



19A California Points and Authorities, Ch. 196, *Public Entities*, §§ 196.12, 196.214 (Matthew Bender)

**1123. Affirmative Defense—Design Immunity (Gov. Code, § 830.6)**

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**[Name of defendant] claims that it is not responsible for harm to [name of plaintiff] caused by the plan or design of the [insert type of property, e.g., highway]. In order to prove this claim, [name of defendant] must prove both of the following:**

- 1. That the plan or design was [prepared in conformity with standards previously] approved before [construction/improvement] by the [[legislative body of the public entity, e.g., city council]/[other body or employee, e.g., city civil engineer]] exercising [its/specifically delegated] discretionary authority to approve the plan or design; and**
  - 2. That the plan or design of the [e.g., highway] was a substantial factor in causing harm to [name of plaintiff].**
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*New December 2014; Revised June 2016*

**Directions for Use**

Give this instruction to present the affirmative defense of design immunity to a claim for liability caused by a dangerous condition on public property. (Gov. Code, § 830.6; see *Martinez v. County of Ventura* (2014) 225 Cal.App.4th 364, 369 [169 Cal.Rptr.3d 880] [design immunity is an affirmative defense that the public entity must plead and prove].)

A public entity claiming design immunity must establish three elements: (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design before construction; and (3) substantial evidence supporting the reasonableness of the plan or design. (*Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 66 [109 Cal.Rptr.2d 1, 26 P.3d 332].) The first two elements, causation and discretionary approval, are issues of fact for the jury to decide. (*Id.* at pp. 74–75; see also *Alvis v. County of Ventura* (2009) 178 Cal.App.4th 536, 550 [100 Cal.Rptr.3d 494] [elements may be resolved as issues of law only if facts are undisputed].) The third element, substantial evidence of reasonableness, must be tried by the court, not the jury. (*Cornette, supra*, 26 Cal.4th at pp. 66–67; see Gov. Code, § 830.6.)

In element 1, select “its” if it is the governing body that has exercised its discretionary authority. Select “specifically delegated” if it is some other body or employee.

The discretionary authority to approve the plan or design must be “vested,” which means that the body or employee actually had the express authority to approve it. This authority cannot be implied from the circumstances. (*Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451, 1457 [192 Cal.Rptr.3d 376].)

**Sources and Authority**

- Design Immunity. Government Code section 830.6.

- “The purpose of design immunity ‘is to prevent a jury from second-guessing the decision of a public entity by reviewing the identical questions of risk that had previously been considered by the government officers who adopted or approved the plan or design. [Citation.]’ ‘ “[T]o permit reexamination in tort litigation of particular discretionary decisions where reasonable men may differ as to how the discretion should be exercised would create too great a danger of impolitic interference with the freedom of decision-making by those public officials in whom the function of making such decisions has been vested.” ’ ” (*Martinez, supra*, 225 Cal.App.4th at p. 369, internal citations omitted.)
- “Section 830.6 makes it quite clear that ‘the trial or appellate court’ is to determine whether ‘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.’ ” (*Cornette, supra*, 26 Cal.4th at p. 66.)
- “To prove [the discretionary approval element of design immunity], the entity must show that the design was approved ‘in advance’ of the construction ‘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 ... .’ ‘Approval ... is a vital precondition of the design immunity.’ ” (*Martinez, supra*, 225 Cal.App.4th at p. 369, internal citations omitted.)
- “In many cases, the evidence of discretionary authority to approve a design decision is clear, or even undisputed. For example, ‘[a] detailed plan, drawn up by a competent engineering firm, and approved by a city engineer in the exercise of his or her discretionary authority, is persuasive evidence of the element of prior approval. [Citation.]’ When the discretionary approval issue is disputed, however, as it was here, we must determine whether the person who approved the construction had the discretionary authority to do so.” (*Martinez, supra*, 225 Cal.App.4th at pp. 370–371, internal citations omitted.)
- “[T]he focus of discretionary authority to approve a plan or design is fixed by law and will not be implied. ‘[T]he public entity claiming design immunity must prove that the person or entity who made the decision is vested with the authority to do so. Recognizing “implied” discretionary approval would vitiate this requirement and provide public entities with a blanket release from liability that finds no support in section 830.6.’ ” (*Castro, supra*, 239 Cal.App.4th at p. 1457.)
- “We conclude that the discretionary approval element of section 830.6 does not implicate the question whether the employee who approved the plans was aware of design standards or was aware that the design deviated from those standards. The issue of the adequacy of the deliberative process with respect to design standards may be considered in connection with the court’s determination whether there is substantial evidence that the design was reasonable. In addition, the discretionary approval element does not require the entity to demonstrate in its prima facie case that the employee who had authority to and did approve the plans also had authority to disregard applicable standards.” (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 343 [195 Cal.Rptr.3d 773, 362 P.3d 417].)

***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 229, 280 et seq.

Haning et al., California Practice Guide: Personal Injury, Ch. 2(III)-D, Liability For “Dangerous Conditions” Of Public Property, ¶ 2:2855 et seq. (The Rutter Group)

5 Levy et al., California Torts, Ch. 61, *Particular Liabilities and Immunities of Public Entities and Public Employees*, § 61.03 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 464, *Public Entities and Officers: California Government Claims Act*, § 464.85[2] (Matthew Bender)

19A California Points and Authorities, Ch. 196, *Public Entities*, § 196.12 (Matthew Bender)

## 1205. Strict Liability—Failure to Warn—Essential Factual Elements

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*[Name of plaintiff]* claims that the *[product]* lacked sufficient **[instructions]** **[or]** **[warning of potential risks/side effects/allergic reactions]**. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* **[manufactured/distributed/sold]** the *[product]*;
2. That the *[product]* had potential **[risks/side effects/allergic reactions]** that were **[known/ or] knowable in light of the [scientific/ and] medical knowledge that was generally accepted in the scientific community]** at the time of **[manufacture/distribution/sale]**;
3. That the potential **[risks/side effects/allergic reactions]** presented a substantial danger when the *[product]* is used or misused in an intended or reasonably foreseeable way;
4. That ordinary consumers would not have recognized the potential **[risks/side effects/allergic reactions]**;
5. That *[name of defendant]* failed to adequately warn **[or instruct]** of the potential **[risks/side effects/allergic reactions]**;
6. That *[name of plaintiff]* was harmed; and
7. That the lack of sufficient **[instructions]** **[or]** **[warnings]** was a substantial factor in causing *[name of plaintiff]*'s harm.

**[The warning must be given to the prescribing physician and must include the potential risks, side effects, or allergic reactions that may follow the foreseeable use of the product. *[Name of defendant]* had a continuing duty to warn physicians as long as the product was in use.]**

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*New September 2003; Revised April 2009, December 2009, June 2011, December 2011*

### Directions for Use

With regard to element 2, it has been often stated in the case law that a manufacturer is liable for failure to warn of a risk that is “knowable in light of generally recognized and prevailing best scientific and medical knowledge available.” (See, e.g., *Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 1002 [281 Cal.Rptr. 528, 810 P.2d 549]; *Carlin v. Superior Court* (1996) 13 Cal.4th 1104, 1112 [56 Cal.Rptr.2d 162, 920 P.2d 1347]; *Saller v. Crown Cork & Seal Company* (2010) 187 Cal.App.4th 1220, 1239 [115 Cal.Rptr.3d 151]; *Rosa v. City of Seaside* (N.D. Cal. 2009) 675 F.Supp.2d 1006, 1012.) The advisory committee believes that this standard is captured by the phrase “generally accepted in the scientific community.” A risk may be “generally recognized” as a view (knowledge) advanced by one

body of scientific thought and experiment, but it may not be the “prevailing” or “best” scientific view; that is, it may be a minority view. The committee believes that when a risk is (1) generally recognized (2) as prevailing in the relevant scientific community, and (3) represents the best scholarship available, it is sufficient to say that the risk is knowable in light of “the generally accepted” scientific knowledge.

The last bracketed paragraph should be read only in prescription product cases: “In the case of prescription drugs and implants, the physician stands in the shoes of the ‘ordinary user’ because it is through the physician that a patient learns of the properties and proper use of the drug or implant. Thus, the duty to warn in these cases runs to the physician, not the patient.” (*Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1483 [81 Cal.Rptr.2d 252].)

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

### Sources and Authority

- “Our law recognizes that even ‘a product flawlessly designed and produced may nevertheless possess such risks to the user without a suitable warning that it becomes ‘defective’ simply by the absence of a warning.’ ...’ Thus, manufacturers have a duty to warn consumers about the hazards inherent in their products. The purpose of requiring adequate warnings is to inform consumers about a product’s hazards and faults of which they are unaware, so that the consumer may then either refrain from using the product altogether or avoid the danger by careful use.” (*Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 577 [90 Cal.Rptr.3d 414], internal citations and footnote omitted.)
- “Negligence and strict products liability are separate and distinct bases for liability that do not automatically collapse into each other because the plaintiff might allege both when a product warning contributes to her injury.” (*Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, 101 [85 Cal.Rptr.3d 299].)
- “The ‘known or knowable’ standard arguably derives from negligence principles, and failure to warn claims are generally ‘rooted in negligence’ to a greater extent than’ manufacturing or design defect claims. Unlike those other defects, a ‘warning defect’ relates to a failure extraneous to the product itself’ and can only be assessed by examining the manufacturer’s conduct. These principles notwithstanding, California law recognizes separate failure to warn claims under both strict liability and negligence theories. In general, a product seller will be strictly liable for failure to warn if a

~~warning was feasible and the absence of a warning caused the plaintiff's injury. Reasonableness of the seller's failure to warn is immaterial in the strict liability context. Conversely, to prevail on a claim for negligent failure to warn, the plaintiff must prove that the seller's conduct fell below the standard of care. If a prudent seller would have acted reasonably in not giving a warning, the seller will not have been negligent.” (Webb v. Special Electric Co., Inc. (2016) 63 Cal.4th 167, 181 [202 Cal.Rptr.3d 460, 370 P.3d 1022], original italics, footnote and internal citations omitted.) [F]ailure to warn in strict liability differs markedly from failure to warn in the negligence context. Negligence law in a failure-to-warn case requires a plaintiff to prove that a manufacturer or distributor did not warn of a particular risk for reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about. Strict liability is not concerned with the standard of due care or the reasonableness of a manufacturer’s conduct. The rules of strict liability require a plaintiff to prove only that the defendant did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution. ... [¶] [T]he manufacturer is liable if it failed to give warning of dangers that were known to the scientific community at the time it manufactured or distributed the product. Thus, in strict liability, as opposed to negligence, the reasonableness of the defendant’s failure to warn is immaterial.” (Anderson, supra, 53 Cal.3d at pp. 1002–1003.)~~

- “It is true that the two types of failure to warn claims are not necessarily exclusive: ‘No valid reason appears to require a plaintiff to elect whether to proceed on the theory of strict liability in tort or on the theory of negligence. ... [¶] Nor does it appear that instructions on the two theories will be confusing to the jury. There is nothing inconsistent in instructions on the two theories and to a large extent the two theories parallel and supplement each other.’ Despite the often significant overlap between the theories of negligence and strict liability based on a product defect, a plaintiff is entitled to instructions on both theories if both are supported by the evidence.” (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 717 [99 Cal.Rptr.3d 418].)
- “The actual knowledge of the individual manufacturer, even if reasonably prudent, is not the issue. We view the standard to require that the manufacturer is held to the knowledge and skill of an expert in the field; it is obliged to keep abreast of any scientific discoveries and is presumed to know the results of all such advances.” (*Carlin, supra*, 13 Cal.4th at p. 1113, fn. 3.)
- “[A] defendant in a strict products liability action based upon an alleged failure to warn of a risk of harm may present evidence of the state of the art, i.e., evidence that the particular risk was neither known nor knowable by the application of scientific knowledge available at the time of manufacture and/or distribution.” (*Anderson, supra*, 53 Cal.3d at p. 1004.)
- “[T]here can be no liability for failure to warn where the instructions or warnings sufficiently alert the user to the possibility of danger.” (*Aguayo v. Crompton & Knowles Corp.* (1986) 183 Cal.App.3d 1032, 1042 [228 Cal.Rptr. 768], internal citation omitted.)
- “A duty to warn or disclose danger arises when an article is or should be known to be dangerous for its intended use, either inherently or because of defects.” (*DeLeon v. Commercial Manufacturing and Supply Co.* (1983) 148 Cal.App.3d 336, 343 [195 Cal.Rptr. 867], internal citation omitted.)

- “California is well settled into the majority view that knowledge, actual or constructive, is a requisite for strict liability for failure to warn ... .” (*Anderson, supra*, 53 Cal.3d at p. 1000.)
- “[T]he duty to warn is not conditioned upon [actual or constructive] knowledge [of a danger] where the defectiveness of a product depends on the adequacy of instructions furnished by the supplier which are essential to the assembly and use of its product.” (*Midgley v. S. S. Kresge Co.* (1976) 55 Cal.App.3d 67, 74 [127 Cal.Rptr. 217].)
- Under *Cronin*, plaintiffs in cases involving manufacturing and design defects do not have to prove that a defect made a product unreasonably dangerous; however, that case “did not preclude weighing the degree of dangerousness in the failure to warn cases.” (*Cavers v. Cushman Motor Sales, Inc.* (1979) 95 Cal.App.3d 338, 343 [157 Cal.Rptr. 142].)
- “Two types of warnings may be given. If the product's dangers may be avoided or mitigated by proper use of the product, ‘the manufacturer may be required adequately to instruct the consumer as to how the product should be used.’ If the risks involved in the use of the product are unavoidable, as in the case of potential side effects of prescription drugs, the supplier must give an adequate warning to enable the potential user to make an informed choice whether to use the product or abstain.” (*Buckner v. Milwaukee Electric Tool Corp.* (2013) 222 Cal.App.4th 522, 532 [166 Cal.Rptr.3d 202], internal citation omitted.)
- “[T]he warning requirement is not limited to unreasonably or unavoidably dangerous products. Rather, directions or warnings are in order where reasonably required *to prevent the use of a product from becoming unreasonably dangerous*. It is the lack of such a warning which renders a product unreasonably dangerous and therefore defective.” (*Gonzales v. Carmenita Ford Truck Sales, Inc.* (1987) 192 Cal.App.3d 1143, 1151 [238 Cal.Rptr. 18], original italics.)
- “In most cases, ... the adequacy of a warning is a question of fact for the jury.” (*Jackson v. Deft, Inc.* (1990) 223 Cal.App.3d 1305, 1320 [273 Cal.Rptr. 214].)
- “There is no duty to warn of known risks or obvious dangers.” (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1304 [144 Cal.Rptr.3d 326].)
- “[A] pharmaceutical manufacturer may not be required to provide warning of a risk known to the medical community.” (*Carlin, supra*, 13 Cal.4th at p. 1116.)
- “To be liable in California, even under a strict liability theory, the plaintiff must prove that the defendant’s failure to warn was a substantial factor in causing his or her injury. (CACI No. 1205.) The natural corollary to this requirement is that a defendant is not liable to a plaintiff if the injury would have occurred even if the defendant had issued adequate warnings.” (*Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1604 [116 Cal.Rptr.3d 453].)
- “When a manufacturer or distributor has no effective way to convey a product warning to the ultimate consumer, the manufacturer should be permitted to rely on downstream suppliers to provide the warning. ‘Modern life would be intolerable unless one were permitted to rely to a certain extent on others doing what they normally do, particularly if it is their duty to do so.’” (*Persons v. Salomon N.*



*Am.* (1990) 217 Cal.App.3d 168, 178 [265 Cal.Rptr. 773], internal citation omitted.)

- “[A] manufacturer’s liability to the ultimate consumer may be extinguished by ‘intervening cause’ where the manufacturer either provides adequate warnings to a middleman or the middleman alters the product before passing it to the final consumer.” (*Garza v. Asbestos Corp., Ltd.* (2008) 161 Cal.App.4th 651, 661 [74 Cal.Rptr.3d 359].)
- “ ‘A manufacturer’s duty to warn is a continuous duty which lasts as long as the product is in use.’ ... [T]he manufacturer must continue to provide physicians with warnings, at least so long as it is manufacturing and distributing the product.” (*Valentine, supra*, 68 Cal.App.4th at p. 1482.)
- “ ‘[T]he law now requires a manufacturer to foresee some degree of misuse and abuse of his product, either by the user or by third parties, and to take reasonable precautions to minimize the harm that may result from misuse and abuse. ... [T]he extent to which designers and manufacturers of dangerous machinery are required to anticipate safety neglect presents an issue of fact. ... [A] manufacturer owes a foreseeable user of its product a duty to warn of risks of using the product.’ ” (*Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1235 [63 Cal.Rptr.2d 422].)
- “California law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together.” (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 361 [135 Cal.Rptr.3d 288, 266 P.3d 987].)
- “The *O'Neil* [*supra*] court concluded that *Tellez-Cordova* [*Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.* (2004) 129 Cal.App.4th 577] marked an exception to the general rule barring imposition of strict liability on a manufacturer for harm caused by another manufacturer's product. That exception is applicable when ‘the defendant's own product contributed substantially to the harm ... .’ In expounding the exception, the court rejected the notion that imposition of strict liability on manufacturers is appropriate when it is merely foreseeable that their products will be used in conjunction with products made or sold by others. The *O'Neil* court further explained: ‘Recognizing a duty to warn was appropriate in *Tellez-Cordova* because there the defendant's product was intended to be used with another product *for the very activity that created a hazardous situation*. Where the intended use of a product inevitably creates a hazardous situation, it is reasonable to expect the manufacturer to give warnings. Conversely, where the hazard arises entirely from another product, and the defendant's product does not create or contribute to that hazard, liability is not appropriate.’ ” (*Sherman v. Hennessy Industries, Inc.* (2015) 237 Cal.App.4th 1133, 1142 [188 Cal.Rptr.3d 769], original italics, internal citations omitted ; see also *Shields v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 782, 796 [140 Cal.Rptr.3d 268] [~~manufacturer of machine designed and used exclusively to grind asbestos-containing brake linings manufactured by others can be liable~~]; *Hetzel v. Hennessy Industries, Inc.* (2016) 247 Cal.App.4th 521, 529 [202 Cal.Rptr.3d 310] [*O'Neil* does not require evidence of exclusive use, but rather requires a showing of inevitable use]; *Rondon v. Hennessy Industries, Inc.* (2016) 247 Cal.App.4th 1367, 1379 [202 Cal.Rptr.3d 773] [*same*] *Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1114–1115 [141 Cal.Rptr.3d 167].)
- “[L]ike a manufacturer, a raw material supplier has a duty to warn about product risks that are known or knowable in light of available medical and scientific knowledge.” (*Webb, supra*, 63 Cal.4th at p.

181.)

- [T]he duty of a component manufacturer or supplier to warn about the hazards of its products is not unlimited. . . . ‘Making suppliers of inherently safe raw materials and component parts pay for the mistakes of the finished product manufacturer would not only be unfair, but it also would impose and intolerable burden on the business world . . . . Suppliers of versatile materials like chains, valves, sand gravel, etc., cannot be expected to become experts in the infinite number of finished products that might conceivably incorporate their multi-use raw materials or components.’ Thus, cases have subjected claims made against component suppliers to two related doctrines, the ‘raw material supplier defense’ and ‘the bulk sales/sophisticated purchaser rule.’ Although the doctrines are distinct, their application oftentimes overlaps and together they present factors which should be carefully considered in evaluating the liability of component suppliers. Those factors include whether the raw materials or components are inherently dangerous, whether the materials are significantly altered before integration into an end product, whether the supplier was involved in designing the end-product and whether the manufacturer of the end product was in a position to discover and disclose hazards.” (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 837 [71 Cal.Rptr.2d 817].)

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1467–1479

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability for Defective Products*, ¶¶ 2:1275–2:1276 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.11, Ch. 7, *Proof*, § 7.05 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, §§ 460.11, 460.164 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.194 (Matthew Bender)

## 1222. Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements

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**[Name of plaintiff] claims that [name of defendant] was negligent by not using reasonable care to warn [or instruct] about the [product]’s dangerous condition or about facts that made the [product] likely to be dangerous. To establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of defendant] [manufactured/distributed/sold] the [product];**
- 2. That [name of defendant] knew or reasonably should have known that the [product] was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;**
- 3. That [name of defendant] knew or reasonably should have known that users would not realize the danger;**
- 4. That [name of defendant] failed to adequately warn of the danger [or instruct on the safe use of the [product]];**
- 5. That a reasonable [manufacturer/distributor/seller] under the same or similar circumstances would have warned of the danger [or instructed on the safe use of the [product]];**
- 6. That [name of plaintiff] was harmed; and**
- 7. That [name of defendant]’s failure to warn [or instruct] was a substantial factor in causing [name of plaintiff]’s harm.**

**[The warning must be given to the prescribing physician and must include the potential risks or side effects that may follow the foreseeable use of the product. [Name of defendant] had a continuing duty to warn physicians as long as the product was in use.]**

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*New September 2003; Revised June 2011, December 2012*

### Directions for Use

Give this instruction in a case involving product liability in which a claim for failure to warn is included under a negligence theory. For an instruction on failure to warn under strict liability and for additional sources and authority, see CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*. For instructions on design and manufacturing defect under a negligence theory, see CACI No. 1220, *Negligence—Essential Factual Elements*, and CACI No. 1221, *Negligence—Basic Standard of Care*.

To make a prima facie case, the plaintiff has the initial burden of producing evidence that he or she was injured while the product was being used in an intended or reasonably foreseeable manner. If this prima

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

The last bracketed paragraph is to be used in prescription drug cases only.

### Sources and Authority

- “[T]he manufacturer has a duty to use reasonable care to give warning of the dangerous condition of the product or of facts which make it likely to be dangerous to those whom he should expect to use the product or be endangered by its probable use, if the manufacturer has reason to believe that they will not realize its dangerous condition.” (*Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1076–1077 [91 Cal.Rptr. 319].)
- “Negligence law in a failure-to-warn case requires a plaintiff to prove that a manufacturer or distributor did not warn of a particular risk for reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about.” (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1305 [144 Cal.Rptr.3d 326], internal citation omitted.)
- “Negligence and strict products liability are separate and distinct bases for liability that do not automatically collapse into each other because the plaintiff might allege both when a product warning contributes to her injury.” (*Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, 101 [85 Cal.Rptr.3d 299].)
- “The ‘known or knowable’ standard arguably derives from negligence principles, and failure to warn claims are generally ‘rooted in negligence’ to a greater extent than’ manufacturing or design defect claims. Unlike those other defects, a ‘warning defect’ relates to a failure extraneous to the product itself’ and can only be assessed by examining the manufacturer’s conduct. These principles notwithstanding, California law recognizes separate failure to warn claims under both strict liability and negligence theories. In general, a product seller will be strictly liable for failure to warn if a warning was feasible and the absence of a warning caused the plaintiff’s injury. Reasonableness of the seller’s failure to warn is immaterial in the strict liability context. Conversely, to prevail on a claim for negligent failure to warn, the plaintiff must prove that the seller’s conduct fell below the standard of care. If a prudent seller would have acted reasonably in not giving a warning, the seller will not have been negligent.” (*Webb v. Special Electric Co., Inc.* (2016) 63 Cal. 4th 167; 181 [202 Cal.Rptr.3d 460, 370 P.3d 1022], footnote and internal citations omitted.)[F]ailure to warn in strict liability differs markedly from failure to warn in the negligence context. Negligence law in a failure to warn case requires a plaintiff to prove that a manufacturer or distributor did not warn of a particular risk for

~~reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about. Strict liability is not concerned with the standard of due care or the reasonableness of a manufacturer's conduct. The rules of strict liability require a plaintiff to prove only that the defendant did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution. Thus, in strict liability, as opposed to negligence, the reasonableness of the defendant's failure to warn is immaterial.” (Anderson v. Owens-Corning Fiberglas Corp. (1991) 53 Cal.3d 987, 1002 [281 Cal.Rptr. 528, 810 P.2d 549].)~~

- “It is true that the two types of failure to warn claims are not necessarily exclusive: ‘No valid reason appears to require a plaintiff to elect whether to proceed on the theory of strict liability in tort or on the theory of negligence. ... [¶] Nor does it appear that instructions on the two theories will be confusing to the jury. There is nothing inconsistent in instructions on the two theories and to a large extent the two theories parallel and supplement each other.’ Despite the often significant overlap between the theories of negligence and strict liability based on a product defect, a plaintiff is entitled to instructions on both theories if both are supported by the evidence.” (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 717 [99 Cal.Rptr.3d 418].)

### **Secondary Sources**

6 Witkin, Summary of California Law (10th ed. [2005](#)) Torts, §§ 1171–1174A

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1271, 2:1295 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.21, Ch. 7, *Proof*, § 7.05 (Matthew Bender)

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

19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.165 et seq. (Matthew Bender)

### 1244. Affirmative Defense—Sophisticated User

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**[Name of defendant] claims that [he/she/it] is not responsible for any harm to [name of plaintiff] based on a failure to warn because [name of plaintiff] is a sophisticated user of the [product]. To succeed on this defense, [name of defendant] must prove that, at the time of the injury, [name of plaintiff], because of [his/her] particular position, training, experience, knowledge, or skill, knew or should have known of the [product]’s risk, harm, or danger.**

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*New October 2008; Revised December 2014*

#### Directions for Use

Give this instruction as a defense to CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*, or CACI No. 1222, *Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements*.

In some cases, it may be necessary to expand this instruction to state that the plaintiff knew or should have known of the particular risk posed by the product, of the severity of the potential consequences, and how to use the product to reduce or avoid the risks, to the extent that information was known to the defendant. (See *Buckner v. Milwaukee Electric Tool Corp.* (2013) 222 Cal.App.4th 522, 536 [166 Cal.Rptr.3d 202].)

#### Sources and Authority

- “A manufacturer is not liable to a sophisticated user of its product for failure to warn of a risk, harm, or danger, if the sophisticated user knew or should have known of that risk, harm, or danger.” (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 71 [74 Cal.Rptr.3d 108, 179 P.3d 905].)
- “The sophisticated user defense exempts manufacturers from their typical obligation to provide product users with warnings about the products’ potential hazards. The defense is considered an exception to the manufacturer’s general duty to warn consumers, and therefore, in most jurisdictions, if successfully argued, acts as an affirmative defense to negate the manufacturer’s duty to warn.” (*Johnson, supra*, 43 Cal.4th at p. 65, internal citation omitted.)
- “Under the sophisticated user defense, sophisticated users need not be warned about dangers of which they are already aware or should be aware. Because these sophisticated users are charged with knowing the particular product’s dangers, the failure to warn about those dangers is not the legal cause of any harm that product may cause. The rationale supporting the defense is that ‘the failure to provide warnings about risks already known to a sophisticated purchaser usually is not a proximate cause of harm resulting from those risks suffered by the buyer’s employees or downstream purchasers.’ This is because the user’s knowledge of the dangers is the equivalent of prior notice.” (*Johnson, supra*, 43 Cal.4th at p. 65, internal citations omitted.)
- “[T]he defense applies equally to strict liability and negligent failure to warn cases. The duty to

warn is measured by what is generally known or should have been known to the class of sophisticated users, rather than by the individual plaintiff's subjective knowledge." (*Johnson, supra*, 43 Cal.4th at pp. 65–66, internal citations omitted.)

- “[A] manufacturer is not liable to a sophisticated user for failure to warn, even if the failure to warn is a failure to provide a warning required by statute.” (*Johnson v. Honeywell Internat. Inc.* (2009) 179 Cal.App.4th 549, 556 [101 Cal.Rptr.3d 726].)
- “The sophisticated user defense concerns warnings. Sophisticated users ‘are charged with knowing the particular product’s dangers.’ ‘The rationale supporting the defense is that “the failure to provide warnings about risks already known to a sophisticated purchaser usually is not a proximate cause of harm resulting from those risks suffered by the buyer’s employees or downstream purchasers.” [Citation.]’ [¶] [Plaintiff]’s design defect cause of action was not concerned with warnings. Instead, he alleged that respondents’ design of their refrigerant was defective. We see no logical reason why a defense that is based on the need for warning should apply.” (*Johnson, supra*, 179 Cal.App.4th at p. 559, internal citations omitted.)
- “The relevant time for determining user sophistication for purposes of this exception to a manufacturer’s duty to warn is when the sophisticated user is injured and knew or should have known of the risk.” (*Johnson, supra*, 43 Cal.4th at p. 73.)
- “*Johnson* did not impute an intermediary’s knowledge to the plaintiff, or charge him with any knowledge except that which had been made available to him through his training and which, by reason of his profession and certification, he should have had. In contrast, [defendant]’s proposed instruction is not based on the theory that [plaintiff] had the opportunity to acquire any knowledge of the dangers of asbestos, let alone the obligation to do so. Instead, it contends that its customers ... knew or should have known (from public sources) of the dangers of asbestos, and that its duty to warn [plaintiff] is measured by the knowledge [the customers] should have had. It is apparent that such a theory has nothing to do with *Johnson*.” (*Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 28–29 [117 Cal.Rptr.3d 791].)
- “Thus, in actions by employees or servants, the critical issue concerns their knowledge (or potential knowledge), rather than an intermediary's sophistication. [¶] This conclusion flows directly from [Restatement Third of Torts] section 388 itself. Under section 388, a supplier of a dangerous item to users ‘directly or through a third person’ is subject to liability for a failure to warn, when the supplier ‘has no reason to believe that those for whose use the [item] is supplied will realize its dangerous condition.’ Accordingly, to avoid liability, there must be some basis for the supplier to believe that the ultimate user knows, or should know, of the item's hazards. In view of this requirement, the intermediary's sophistication is not, as matter of law, sufficient to avert liability; there must be a sufficient reason for believing that the intermediary's sophistication is likely to operate to protect the user, or that the user is likely to discover the hazards in some other manner. The fact that the user is an employee or servant of the sophisticated intermediary cannot plausibly be regarded as a sufficient reason, as a matter of law, to infer that the latter will protect the former. We therefore reject [defendant]’s contention that an intermediary's sophistication invariably shields suppliers from liability to the intermediary's employees or servants.” (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1296–1297 [164 Cal.Rptr.3d 112].)

- “In order to establish the defense, a manufacturer must demonstrate that sophisticated users of the product know what the risks are, including the degree of danger involved (i.e., the severity of the potential injury), and how to use the product to reduce or avoid the risks, to the extent that information is known to the manufacturer.” (*Buckner, supra*, 222 Cal.App.4th at p. 536.)
- “Under the “should have known” standard there will be some users who were actually unaware of the dangers. However, the same could be said of the currently accepted obvious danger rule; obvious dangers are obvious to most, but are not obvious to absolutely everyone. The obvious danger rule is an objective test, and the courts do not inquire into the user's subjective knowledge in such a case. In other words, even if a user was truly unaware of a product's hazards, that fact is irrelevant if the danger was objectively obvious. [Citations.] Thus, under the sophisticated user defense, the inquiry focuses on whether the plaintiff knew, or should have known, of the particular risk of harm from the product giving rise to the injury.’ [Citation]” (*Moran v. Foster Wheeler Energy Corp.* (2016) 246 Cal.App.4th 500, 511 [200 Cal.Rptr.3d 902].)
- “[S]peculation about a risk does not give rise to constructive *knowledge* of a risk under the ‘should have known’ test.” (*Scott v. Ford Motor Co.* (2014) 224 Cal.App.4th 1492, 1501 [169 Cal.Rptr.3d 823], original italics.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1467, 1537, 1541–1542

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶ 2:1277 (The Rutter Group)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, § 460.185 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.246 (Matthew Bender)



**1700. Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)**

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*[Name of plaintiff]* claims that *[name of defendant]* harmed *[him/her]* by making *[one or more of]* the following statement(s): *[list all claimed per se defamatory statements]*. To establish this claim, *[name of plaintiff]* must prove that all of the following are more likely true than not true:

*Liability*

1. That *[name of defendant]* made *[one or more of]* the statement(s) to *[a person/persons]* other than *[name of plaintiff]*;
2. That *[this person/these people]* reasonably understood that the statement(s) *[was/were]* about *[name of plaintiff]*;
3. *[That [this person/these people] reasonably understood the statement(s) to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]]*; and
4. That the statement(s) *[was/were]* false.

In addition, *[name of plaintiff]* must prove by clear and convincing evidence that *[name of defendant]* knew the statement(s) *[was/were]* false or had serious doubts about the truth of the statement(s).

*Actual Damages*

If *[name of plaintiff]* has proved all of the above, then *[he/she]* is entitled to recover *[his/her]* actual damages if *[he/she]* proves that *[name of defendant]*'s wrongful conduct was a substantial factor in causing any of the following:

- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation;
- b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements;
- c. Harm to *[name of plaintiff]*'s reputation; or
- d. Shame, mortification, or hurt feelings.

*Assumed Damages*

Even if *[name of plaintiff]* has not proved any actual damages for harm to reputation or shame, mortification, or hurt feelings, the law nonetheless assumes that *[he/she]* has suffered this harm. Without presenting evidence of damage, *[name of plaintiff]* is entitled to receive compensation for this assumed harm in whatever sum you believe is reasonable. You must award at least a nominal sum, such as one dollar.

### *Punitive Damages*

**[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she] proves by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

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New September 2003; Revised April 2008, June 2016, December 2016

#### **Directions for Use**

Special verdict form CACI No. VF-1700, *Defamation per se (Public Officer/Figure and Limited Public Figure)*, should be used in this type of case.

Use the bracketed element 3 only if the statement is not defamatory on its face (i.e., if the judge has not determined that the statement is defamatory as a matter of law). For statutory grounds of defamation per se, see Civil Code sections 45 (libel) and 46 (slander). Note that certain specific grounds of libel per se have been defined by case law.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., Civ. Code, § 47(d); *J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

#### **Sources and Authority**

- Defamation. Civil Code section 44.
- Libel Defined. Civil Code section 45.
- Libel per se. Civil Code section 45a.
- Slander Defined. Civil Code section 46.
- “Defamation is the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or that causes special damage.” (*Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 486 [183 Cal.Rptr.3d 867].)

- “The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.” (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369 [117 Cal.Rptr.3d 747].)
- “[S]tatements cannot form the basis of a defamation action if they cannot be reasonably interpreted as stating actual facts about an individual. Thus, rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of contempt and language used in a loose, figurative sense will not support a defamation action.” (*Grenier, supra*, 234 Cal.App.4th at p. 486.)
- “ ‘ “If no reasonable reader would perceive in a false and unprivileged publication a meaning which tended to injure the subject's reputation in any of the enumerated respects, then there is no libel at all. If such a reader would perceive a defamatory meaning without extrinsic aid beyond his or her own intelligence and common sense, then ... there is a libel per se. But if the reader would be able to recognize a defamatory meaning only by virtue of his or her knowledge of specific facts and circumstances, extrinsic to the publication, which are not matters of common knowledge rationally attributable to all reasonable persons, then ... the libel cannot be libel per se but will be libel per quod,” requiring pleading and proof of special damages.’ ” (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351–352 [192 Cal.Rptr.3d 511].)
- “A slander that falls within the first four subdivisions of Civil Code section 46 is slander per se and requires no proof of actual damages. A slander that does not fit into those four subdivisions is slander per quod, and special damages are required for there to be any recovery for that slander.” (*The Nethercutt Collection v. Regalia* (2009) 172 Cal.App.4th 361, 367 [90 Cal.Rptr.3d 882], internal citations omitted.)
- “With respect to slander per se, the trial court decides if the alleged statement falls within Civil Code section 46, subdivisions 1 through 4. It is then for the trier of fact to determine if the statement is defamatory. This allocation of responsibility may appear, at first glance, to result in an overlap of responsibilities because a trial court determination that the statement falls within those categories would seemingly suggest that the statement, if false, is necessarily defamatory. But a finder of fact might rely upon extraneous evidence to conclude that, under the circumstances, the statement was not defamatory.” (*The Nethercutt Collection, supra*, 172 Cal.App.4th at pp. 368–369.)
- “[T]he jury was instructed that if it found that defendant published matter that was defamatory on its face and it found by clear and convincing evidence that defendant knew the statement was false or published it in reckless disregard of whether it was false, then the jury ‘also may award plaintiff presumed general damages.’ Presumed damages ‘are those damages that necessarily result from the publication of defamatory matter and are presumed to exist. They include reasonable compensation for loss of reputation, shame, mortification, and hurt feeling. No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for presumed damages, and no evidence of actual harm is required. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for presumed damages, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence. You may in the exercise of your discretion award nominal damages only, namely an insignificant sum such as one dollar.’ [¶] ... [¶] ... [T]he instant instruction, which limits

damages to ‘those damages that necessarily result from the publication of defamatory matter,’ constitutes substantial compliance with [Civil Code] section 3283. Thus, the instant instructions, ‘if obeyed, did not allow the jurors to “enter the realm of speculation” regarding future suffering.’ ” (*Sommer v. Gabor* (1995) 40 Cal.App.4th 1455, 1472–1473 [48 Cal.Rptr.2d 235], internal citations omitted.)

- “In defamation actions generally, factual truth is a defense which it is the defendant’s burden to prove. In a defamation action against a newspaper by a private person suing over statements of public concern, however, the First Amendment places the burden of proving falsity on the plaintiff. As a matter of constitutional law, therefore, media statements on matters of public interest, including statements of opinion which reasonably imply a knowledge of facts, ‘must be provable as false before there can be liability under state defamation law.’ ” (*Eisenberg v. Alameda Newspapers* (1999) 74 Cal.App.4th 1359, 1382 [88 Cal.Rptr.2d 802], internal citations omitted.)
- In matters involving public concern, the First Amendment protection applies to nonmedia defendants, putting the burden of proving falsity of the statement on the plaintiff. (*Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364, 375 [54 Cal.Rptr.2d 781].)
- “Publication means communication to some third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made. Publication need not be to the ‘public’ at large; communication to a single individual is sufficient.” (*Smith, supra*, 72 Cal.App.4th at p. 645, internal citations omitted.)
- “[W]hen a party repeats a slanderous charge, he is equally guilty of defamation, even though he states the source of the charge and indicates that he is merely repeating a rumor.” (*Jackson v. Paramount Pictures Corp.* (1998) 68 Cal.App.4th 10, 26 [80 Cal.Rptr.2d 1], internal citation omitted.)
- “At common law, one who republishes a defamatory statement is deemed thereby to have adopted it and so may be held liable, together with the person who originated the statement, for resulting injury to the reputation of the defamation victim. California has adopted the common law in this regard, although by statute the republication of defamatory statements is privileged in certain defined situations.” (*Khawar v. Globe Internat.* (1998) 19 Cal.4th 254, 268 [79 Cal.Rptr.2d 178, 965 P.2d 696], internal citations omitted.)
- The general rule is that “a plaintiff cannot manufacture a defamation cause of action by publishing the statements to third persons; the publication must be done by the defendant.” There is an exception to this rule. [When it is foreseeable that the plaintiff] “ ‘will be under a strong compulsion to disclose the contents of the defamatory statement to a third person after he has read it or been informed of its contents.’ ” (*Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1284 [286 Cal.Rptr. 198], internal citations omitted.)
- Whether a plaintiff in a defamation action is a public figure is a question of law for the trial court. (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252 [208 Cal.Rptr. 137, 690 P.2d 610].)
- “To qualify as a limited purpose public figure, a plaintiff ‘must have undertaken some voluntary

[affirmative] act[ion] through which he seeks to influence the resolution of the public issues involved.’ ” (*Rudnick v. McMillan* (1994) 25 Cal.App.4th 1183, 1190 [31 Cal.Rptr.2d 193]; see also *Mosesian v. McClatchy Newspapers* (1991) 233 Cal.App.3d 1685, 1689 [285 Cal.Rptr. 430].)

- “Characterizing a plaintiff as a limited purpose public figure requires the presence of certain elements. First, there must be a public controversy about a topic that concerns a substantial number of people. In other words, the issue was publicly debated. Second, the plaintiff must have voluntarily acted to influence resolution of the issue of public interest. To satisfy this element, the plaintiff need only attempt to thrust himself or herself into the public eye. Once the plaintiff places himself or herself in the spotlight on a topic of public interest, his or her private words and acts relating to that topic become fair game. However, the alleged defamation must be germane to the plaintiff’s participation in the public controversy.” (*Grenier, supra*, 234 Cal.App.4th at p. 484, internal citations omitted.)
- “The First Amendment limits California’s libel law in various respects. When, as here, the plaintiff is a public figure, he cannot recover unless he proves by clear and convincing evidence that the defendant published the defamatory statement with actual malice, i.e., with ‘knowledge that it was false or with reckless disregard of whether it was false or not.’ Mere negligence does not suffice. Rather, the plaintiff must demonstrate that the author ‘in fact entertained serious doubts as to the truth of his publication,’ or acted with a ‘high degree of awareness of ... probable falsity.’ ” (*Masson v. New Yorker Magazine* (1991) 501 U.S. 496, 510 [111 S.Ct. 2419, 115 L.Ed.2d 447], internal citations omitted; see *St. Amant v. Thompson* (1968) 390 U.S. 727, 731 [88 S.Ct. 1323, 20 L.Ed.2d 262]; *New York Times v. Sullivan* (1964) 376 U.S. 254, 279–280 [84 S.Ct. 710, 11 L.Ed.2d 686].)
- The *New York Times v. Sullivan* standard applies to private individuals with respect to presumed or punitive damages if the statement involves a matter of public concern. (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 349 [94 S.Ct. 2997, 41 L.Ed.2d 789].)
- “California ... permits defamation liability so long as it is consistent with the requirements of the United States Constitution.” (*Melaleuca, Inc. v. Clark* (1998) 66 Cal.App.4th 1344, 1359 [78 Cal.Rptr.2d 627], citing *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 740–742 [257 Cal.Rptr. 708, 771 P.2d 406].)
- “Actual malice under the *New York Times* standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will. ... In place of the term actual malice, it is better practice that jury instructions refer to publication of a statement with knowledge of falsity or reckless disregard as to truth or falsity.” (*Masson, supra*, 501 U.S. at pp. 510–511, internal citations omitted.)
- Actual malice “does not require that the reporter hold a devout belief in the truth of the story being reported, only that he or she refrain from either reporting a story he or she knows to be false or acting in reckless disregard of the truth.” (*Jackson, supra*, 68 Cal.App.4th at p. 35.)
- “The law is clear [that] the recklessness or doubt which gives rise to actual or constitutional malice is subjective recklessness or doubt.” (*Melaleuca, Inc., supra*, 66 Cal.App.4th at p. 1365.)

- To show reckless disregard, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.” (*St. Amant, supra*, 390 U.S. at p. 731.)
- “ ‘A defamation plaintiff may rely on inferences drawn from circumstantial evidence to show actual malice. [Citation.] “A failure to investigate [fn. omitted] [citation], anger and hostility toward the plaintiff [citation], reliance upon sources known to be unreliable [citations], or known to be biased against the plaintiff [citations]—such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication.” ’ ” (*Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 873 [162 Cal.Rptr.3d 188].)
- “ ‘ “[Evidence] of negligence, of motive and of intent may be adduced for the purpose of establishing, by cumulation and by appropriate inferences, the fact of a defendant's recklessness or of his knowledge of falsity.” [Citations.] A failure to investigate [citation], anger and hostility toward the plaintiff [citation], reliance upon sources known to be unreliable [citations], or known to be biased against the plaintiff [citations]—such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication. [¶] We emphasize that such evidence is relevant only to the extent that it reflects on the subjective attitude of the publisher. [Citations.] The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice, nor even necessarily raise a triable issue of fact on that controversy. [Citations.] Similarly, mere proof of ill will on the part of the publisher may likewise be insufficient. [Citation.]’ ” (*Young v. CBS Broadcasting, Inc.* (2012) 212 Cal.App.4th 551, 563 [151 Cal.Rptr.3d 237], quoting *Reader's Digest Assn., supra*, 37 Cal.3d at pp. 257–258, footnote omitted.)
- “An entity other than a natural person may be libeled.” (*Live Oak Publishing Co., supra*, 234 Cal.App.3d at p. 1283.)

### **Secondary Sources**

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 601–612

Chin, et al., California Practice Guide: Employment Litigation, Ch. 5-D, *Employment Torts And Related Claims—Defamation*, ¶ 5:372 (The Rutter Group)

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, § 340.10 et seq. (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, §§ 142.24–142.27 (Matthew Bender)

1 California Civil Practice: Torts §§ 21:1–21:2, 21:22–21:25, 21:44–21:52 (Thomson Reuters)

**1701. Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)**

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*[Name of plaintiff]* claims that *[name of defendant]* harmed *[him/her]* by making *[one or more of]* the following statement(s): *[list all claimed per quod defamatory statements]*.

*Liability*

To establish this claim, *[name of plaintiff]* must prove that all of the following are more likely true than not true:

1. That *[name of defendant]* made *[one or more of]* the statement(s) to *[a person/persons]* other than *[name of plaintiff]*;
2. That *[this person/these people]* reasonably understood that the statement(s) *[was/were]* about *[name of plaintiff]*;
3. That because of the facts and circumstances known to the *[listener(s)/reader(s)]* of the statement(s), *[it/they]* tended to injure *[name of plaintiff]* in *[his/her]* occupation *[or to expose [him/her] to hatred, contempt, ridicule, or shame]* *[or to discourage others from associating or dealing with [him/her]]*;
4. That the statement(s) *[was/were]* false;
5. That *[name of plaintiff]* suffered harm to *[his/her]* property, business, profession, or occupation *[including money spent as a result of the statement(s)]*; and
6. That the statement(s) *[was/were]* a substantial factor in causing *[name of plaintiff]*'s harm.

In addition, *[name of plaintiff]* must prove by clear and convincing evidence that *[name of defendant]* knew the statement(s) *[was/were]* false or had serious doubts about the truth of the statement(s).

*Actual Damages*

If *[name of plaintiff]* has proved all of the above, then *[he/she]* is entitled to recover if *[he/she]* proves it is more likely true than not true that *[name of defendant]*'s wrongful conduct was a substantial factor in causing any of the following actual damages:

- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation;
- b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements;
- c. Harm to *[name of plaintiff]*'s reputation; or
- d. Shame, mortification, or hurt feelings.

### *Punitive Damages*

**[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she] proves by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

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New September 2003; Revised April 2008, June 2016, December 2016

#### **Directions for Use**

Special verdict form CACI No. VF-1701, *Defamation per quod (Public Officer/Figure and Limited Public Figure)*, should be used in this type of case.

Presumed damages either are not available or will likely not be sought in a per quod case.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., Civ. Code, § 47(d); *J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

See also the Sources and Authority to CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

#### **Sources and Authority**

- Defamation. Civil Code section 44.
- Libel Defined. Civil Code section 45.
- Libel per se. Civil Code section 45a.
- Slander Defined. Civil Code section 46.
- Special Damages. Civil Code section 48a(4)(b).



- “The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.” (*Wong v. Jing* (2011) 189 Cal.App.4th 1354, 1369 [117 Cal.Rptr.3d 747].)
- “ “If no reasonable reader would perceive in a false and unprivileged publication a meaning which tended to injure the subject's reputation in any of the enumerated respects, then there is no libel at all. If such a reader would perceive a defamatory meaning without extrinsic aid beyond his or her own intelligence and common sense, then ... there is a libel per se. But if the reader would be able to recognize a defamatory meaning only by virtue of his or her knowledge of specific facts and circumstances, extrinsic to the publication, which are not matters of common knowledge rationally attributable to all reasonable persons, then ... the libel cannot be libel per se but will be libel per quod,” requiring pleading and proof of special damages.’ ” (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351–352 [192 Cal.Rptr.3d 511].)
- “If [a] defamatory meaning would appear only to readers who might be able to recognize it through some knowledge of specific facts and/or circumstances, not discernible from the face of the publication, and which are not matters of common knowledge rationally attributable to all reasonable persons, then the libel cannot be libel per se but will be libel per quod.” (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5 [86 Cal.Rptr.2d 73], internal citation omitted.)
- “The question whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court. However, ... , some statements are ambiguous and cannot be characterized as factual or nonfactual as a matter of law. ‘In these circumstances, it is for the jury to determine whether an ordinary reader would have understood the article as a factual assertion . . . .’ ” (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1608 [284 Cal.Rptr. 244].)
- “In pleading a case of libel per quod the plaintiff cannot assume that the court has access to the reader’s special knowledge of extrinsic facts but must specially plead and prove those facts.” (*Palm Springs Tennis Club, supra*, 73 Cal.App.4th at p. 7.)
- “A libel ‘per quod,’ ... requires that the injurious character or effect be established by allegation and proof.” (*Slaughter v. Friedman* (1982) 32 Cal.3d 149, 153–154 [185 Cal.Rptr. 244, 649 P.2d 886].)
- “In the libel context, ‘inducement’ and ‘innuendo’ are terms of art: ‘[W]here the language is ambiguous and an explanation is necessary to establish the defamatory meaning, the pleader must do two things: (1) Allege his interpretation of the defamatory meaning of the language (the “innuendo,” ... ); (2) support that interpretation by alleging facts showing that the readers or hearers to whom it was published would understand it in that defamatory sense (the “inducement”).’ ” (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 387 [226 Cal.Rptr. 354], internal citations omitted.)
- “A slander that falls within the first four subdivisions of Civil Code section 46 is slander per se and requires no proof of actual damages. A slander that does not fit into those four subdivisions is slander per quod, and special damages are required for there to be any recovery for that slander.” (*The Nethercutt Collection v. Regalia* (2009) 172 Cal.App.4th 361, 367 [90 Cal.Rptr.3d 882], internal citations omitted.)

*Secondary Sources*

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 601–612

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, §§ 340.10–340.75 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, §§ 142.24–142.27 (Matthew Bender)

1 California Civil Practice: Torts, §§ 21:1–21:2, 21:22–21:25, 21:44–21:52 (Thomson Reuters)

**1702. Defamation per se—Essential Factual Elements (Private Figure—Matter of Public Concern)**

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*[Name of plaintiff]* claims that *[name of defendant]* harmed *[him/her]* by making *[one or more of]* the following statement(s): *[list all claimed per se defamatory statement(s)]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

*Liability*

1. That *[name of defendant]* made *[one or more of]* the statement(s) to *[a person/persons]* other than *[name of plaintiff]*;
2. That *[this person/these people]* reasonably understood that the statement(s) *[was/were]* about *[name of plaintiff]*;
3. That *[this person/these people]* reasonably understood the statement(s) to mean that *[insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]*;
4. That the statement(s) *[was/were]* false; and
5. That *[name of defendant]* failed to use reasonable care to determine the truth or falsity of the statement(s).

*Actual Damages*

If *[name of plaintiff]* has proved all of the above, then *[he/she]* is entitled to recover *[his/her]* actual damages if *[he/she]* proves that *[name of defendant]*'s wrongful conduct was a substantial factor in causing any of the following:

- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation;
- b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements;
- c. Harm to *[name of plaintiff]*'s reputation; or
- d. Shame, mortification, or hurt feelings.

*Assumed Damages*

If *[name of plaintiff]* has not proved any actual damages for harm to reputation or shame, mortification, or hurt feelings but proves by clear and convincing evidence that *[name of defendant]* knew the statement(s) *[was/were]* false or that *[he/she]* had serious doubts about the truth of the statement(s), then the law assumes that *[name of plaintiff]*'s reputation has been harmed and that *[he/she]* has suffered shame, mortification, or hurt feelings. Without presenting evidence of damage, *[name of plaintiff]* is entitled to receive compensation for this assumed harm in whatever sum you believe is reasonable. You must award at least a nominal sum, such as one dollar.

*Punitive Damages*

**[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she] proves by clear and convincing evidence that [name of defendant] either knew the statement(s) [was/were] false or had serious doubts about the truth of the statement(s), and that [he/she] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

New September 2003; Revised April 2008, October 2008, December 2009, June 2016, December 2016

### Directions for Use

Special verdict form CACI No. VF-1702, *Defamation per se (Private Figure—Matter of Public Concern)*, should be used in this type of case.

For statutes and cases on libel and slander and on the difference between defamation per se and defamation per quod, see the Sources and Authority to CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

Use the bracketed element 3 only if the statement is not defamatory on its face (i.e., if the judge has not determined that the statement is defamatory as a matter of law). For statutory grounds of defamation per se, see Civil Code sections 45 (libel) and 46 (slander). Note that certain specific grounds of libel per se have been defined by case law.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., *Civ. Code, § 47(d); J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

### Sources and Authority

- “Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes

special damage.” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 [85 Cal.Rptr.2d 397].)

- “The question whether a plaintiff is a public figure is to be determined by the court, not the jury.” (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203–204 [35 Cal.Rptr.2d 740], internal citation omitted.)
- A private plaintiff is not required to prove malice to recover actual damages. (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 347-348 [94 S.Ct. 2997, 41 L.Ed.2d 789]; *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 742 [257 Cal.Rptr. 708, 771 P.2d 406].)
- “[I]f the issue was being debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was a public controversy.” (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845 [52 Cal.Rptr.2d 831].)
- “[T]he jury was instructed that if it found that defendant published matter that was defamatory on its face and it found by clear and convincing evidence that defendant knew the statement was false or published it in reckless disregard of whether it was false, then the jury ‘also may award plaintiff presumed general damages.’ Presumed damages ‘are those damages that necessarily result from the publication of defamatory matter and are presumed to exist. They include reasonable compensation for loss of reputation, shame, mortification, and hurt feeling. No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for presumed damages, and no evidence of actual harm is required. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for presumed damages, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence. You may in the exercise of your discretion award nominal damages only, namely an insignificant sum such as one dollar.’ [¶¶] ... [T]he instant instruction, which limits damages to ‘those damages that necessarily result from the publication of defamatory matter,’ constitutes substantial compliance with [Civil Code] section 3283. Thus, the instant instructions, ‘if obeyed, did not allow the jurors to “enter the realm of speculation” regarding future suffering.’ ” (*Sommer v. Gabor* (1995) 40 Cal.App.4th 1455, 1472–1473 [48 Cal.Rptr.2d 235], internal citations omitted.)
- The jury should be instructed that the defendant’s negligence is an element of libel if the plaintiff is a private figure. (*Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1016 [271 Cal.Rptr. 30].)
- “When the speech involves a matter of public concern, a private-figure plaintiff has the burden of proving the falsity of the defamation.” (*Brown, supra*, 48 Cal.3d at p. 747.)
- “Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although there need be no evidence which assigns an actual dollar value to the injury.” (*Gertz, supra*, 418 U.S. at p. 350.)

- Private-figure plaintiffs must prove actual malice to recover punitive or presumed damages for defamation if the matter is one of public concern. They are only required to prove negligence to recover damages for actual injury to reputation. (*Khawar v. Globe Internat.* (1998) 19 Cal.4th 254, 273-274 [79 Cal.Rptr.2d 178, 965 P.2d 696].)
- “A private-figure plaintiff must prove at least negligence to recover any damages and, when the speech involves a matter of public concern, he must also prove *New York Times* malice ... to recover presumed or punitive damages. This malice must be established by ‘clear and convincing proof.’ ” (*Brown, supra*, 48 Cal.3d at p. 747, internal citations omitted.)
- When the court is instructing on punitive damages, it is error to fail to instruct that *New York Times* malice is required when the statements at issue involve matters of public concern. (*Carney, supra*, 221 Cal.App.3d at p. 1022.)
- “To prove actual malice ... a plaintiff must ‘demonstrate with clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubts as to the truth of his statement.’ ” (*Khawar, supra*, 19 Cal.4th at p. 275, internal citation omitted.)
- “Because actual malice is a higher fault standard than negligence, a finding of actual malice generally includes a finding of negligence ....” (*Khawar, supra*, 19 Cal.4th at p. 279.)
- “The inquiry into the protected status of speech is one of law, not fact.” (*Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364, 375 [54 Cal.Rptr.2d 781], quoting *Connick v. Myers* (1983) 461 U.S. 138, 148, fn. 7 [103 S.Ct. 1684, 75 L.Ed.2d 708].)
- “For the *New York Times* standard to be met, ‘the publisher must come close to willfully blinding itself to the falsity of its utterance.’ ” (*Brown, supra*, 48 Cal.3d at p. 747, internal citation omitted.)
- “ ‘While such speech is not totally unprotected by the First Amendment, its protections are less stringent’ [than that applying to speech on matters of public concern].” (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 445 [26 Cal.Rptr.2d 305], internal citation omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 613–615

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, §§ 340.12–340.13, 340.18 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, §§ 142.30–142.40, 142.87 et seq. (Matthew Bender)

4-California Civil Practice: Torts, ~~(Thomson Reuters)~~ §§ 21:1–21:2, 21:22–21:25, 21:51 (Thomson Reuters)

**1703. Defamation per quod—Essential Factual Elements (Private Figure—Matter of Public Concern)**

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*[Name of plaintiff]* claims that *[name of defendant]* harmed *[him/her]* by making *[one or more of]* the following statement(s): *[insert all claimed per quod defamatory statements]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

*Liability*

1. That *[name of defendant]* made *[one or more of]* the statement(s) to *[a person/persons]* other than *[name of plaintiff]*;
2. That *[this person/these people]* reasonably understood that the statement(s) *[was/were]* about *[name of plaintiff]*;
3. That because of the facts and circumstances known to the *[listener(s)/reader(s)]* of the statement(s), *[it/they]* tended to injure *[name of plaintiff]* in *[his/her]* occupation *[or to expose [him/her] to hatred, contempt, ridicule, or shame]* *[or to discourage others from associating or dealing with [him/her]]*;
4. That the statement(s) *[was/were]* false;
5. That *[name of defendant]* failed to use reasonable care to determine the truth or falsity of the statement(s);
6. That *[name of plaintiff]* suffered harm to *[his/her]* property, business, profession, or occupation *[including money spent as a result of the statement(s)]*; and
7. That the statements *[was/were]* a substantial factor in causing *[name of plaintiff]*'s harm.

*Actual Damages*

If *[name of plaintiff]* has proved all of the above, then *[he/she]* is entitled to recover if *[he/she]* proves that *[name of defendant]*'s wrongful conduct was a substantial factor in causing any of the following actual damages:

- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation;
- b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements;
- c. Harm to *[name of plaintiff]*'s reputation; or
- d. Shame, mortification, or hurt feelings.

### *Punitive Damages*

**[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she] proves by clear and convincing evidence that [name of defendant] either knew the statement(s) [was/were] false or had serious doubts about the truth of the statement(s), and that [he/she] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

New September 2003; Revised April 2008, December 2009, June 2016, December 2016

### **Directions for Use**

Special verdict form VF-1703, *Defamation per quod (Private Figure—Matter of Public Concern)*, should be used in this type of case.

Presumed damages either are not available or will likely not be sought in a per quod case.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., Civ. Code, § 47(d); *J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

For statutes and cases on libel and slander and on the difference between defamation per se and defamation per quod, see the Sources and Authority to CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

### **Sources and Authority**

- Libel per se. Civil Code section 45a.
- Special Damages. Civil Code section 48a(4)(b).
- “Libel is recognized as either being per se (on its face), or per quod (literally meaning, ‘whereby’), and each requires a different standard of pleading.” (*Palm Springs Tennis Club v. Rangel* (1999) 73



Cal.App.4th 1, 5 [86 Cal.Rptr.2d 73].)

- “If [a] defamatory meaning would appear only to readers who might be able to recognize it through some knowledge of specific facts and/or circumstances, not discernible from the face of the publication, and which are not matters of common knowledge rationally attributable to all reasonable persons, then the libel cannot be libel per se but will be libel per quod.” (*Palm Springs Tennis Club, supra*, 73 Cal.App.4th at p. 5, internal citation omitted.)
- “In pleading a case of libel per quod the plaintiff cannot assume that the court has access to the reader’s special knowledge of extrinsic facts but must specially plead and prove those facts.” (*Palm Springs Tennis Club, supra*, 73 Cal.App.4th at p. 7, footnote omitted.)
- “A libel ‘per quod’ ... requires that the injurious character or effect be established by allegation and proof.” (*Slaughter v. Friedman* (1982) 32 Cal.3d 149, 153–154 [185 Cal.Rptr. 244, 649 P.2d 886].)
- “In the libel context, ‘inducement’ and ‘innuendo’ are terms of art: ‘[W]here the language is ambiguous and an explanation is necessary to establish the defamatory meaning, the pleader must do two things: (1) Allege his interpretation of the defamatory meaning of the language (the “innuendo,” ... ); (2) support that interpretation by alleging facts showing that the readers or hearers to whom it was published would understand it in that defamatory sense (the “inducement”).’ ” (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 387 [226 Cal.Rptr. 354].)
- “A defamatory publication not libelous on its face is not actionable unless the plaintiff alleges that he has suffered special damages as a result thereof.” (*Selleck v. Globe Int’l, Inc.* (1985) 166 Cal.App.3d 1123, 1130 [212 Cal.Rptr. 838].)
- “The question whether a statement is reasonably susceptible to a defamatory interpretation is a question of law for the trial court. Only once the court has determined that a statement is reasonably susceptible to such a defamatory interpretation does it become a question for the trier of fact whether or not it was so understood.” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 647 [85 Cal.Rptr.2d 397], internal citations omitted.)
- Private-figure plaintiffs must prove actual malice to recover punitive or presumed damages for defamation if the matter is one of public concern. They are only required to prove negligence to recover damages for actual injury to reputation. (*Khawar v. Globe Internat.* (1998) 19 Cal.4th 254, 273–274 [79 Cal.Rptr.2d 178, 965 P.2d 696].)
- “ ‘[I]f the issue was being debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was a public controversy.’ ” (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845 [52 Cal.Rptr.2d 831], quoting *Waldbaum v. Fairchild Publications, Inc.* (D.C. Cir. 1980) 627 F.2d 1287, 1297.)
- If the language is not defamatory on its face, there is no distinction between libel and slander: “In either case, the fact that a statement is not defamatory on its face requires only that the plaintiff plead and prove the defamatory meaning and special damages.” (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 447 [26 Cal.Rptr.2d 305].)

- A plaintiff must prove that the defendant was at least negligent in failing to ascertain the truth or falsity of the statement. (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 345–347 [94 S.Ct. 2997, 41 L.Ed.2d 789].)
- “The question whether a plaintiff is a public figure is to be determined by the court, not the jury.” (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203–204 [35 Cal.Rptr.2d 740], internal citation omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 613–615

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, §§ 340.11, 340.13 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, §§ 142.30–142.40 (Matthew Bender)

1 California Civil Practice: Torts §§ 21:1–21:2, 21:22–21:25, 21:51 (Thomson Reuters)

**1704. Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)**

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**[Name of plaintiff] claims that [name of defendant] harmed [him/her] by making [one or more of] the following statement(s): [list all claimed per se defamatory statement(s)]. To establish this claim, [name of plaintiff] must prove all of the following:**

*Liability*

- 1. That [name of defendant] made [one or more of] the statement(s) to [a person/persons] other than [name of plaintiff];**
- 2. That [this person/these people] reasonably understood that the statement(s) [was/were] about [name of plaintiff];**
- 3. [That [this person/these people] reasonably understood the statement(s) to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”];**
- 4. That [name of defendant] failed to use reasonable care to determine the truth or falsity of the statement(s).**

*Actual Damages*

**If [name of plaintiff] has proved all of the above, then [he/she] is entitled to recover [his/her] actual damages if [he/she] proves that [name of defendant]’s wrongful conduct was a substantial factor in causing any of the following:**

- a. Harm to [name of plaintiff]’s property, business, trade, profession, or occupation;**
- b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements;**
- c. Harm to [name of plaintiff]’s reputation; or**
- d. Shame, mortification, or hurt feelings.**

*Assumed Damages*

**Even if [name of plaintiff] has not proved any actual damages for harm to reputation or shame, mortification, or hurt feelings, the law assumes that [he/she] has suffered this harm. Without presenting evidence of damage, [name of plaintiff] is entitled to receive compensation for this assumed harm in whatever sum you believe is reasonable. You must award at least a nominal sum, such as one dollar.**

*Punitive Damages*

**[Name of plaintiff] may also recover damages to punish [name of defendant] if [he/she] proves by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

New September 2003; Revised April 2008, December 2009, June 2016, December 2016

### Directions for Use

Special verdict form VF-1704, *Defamation per se—Affirmative Defense—Truth (Private Figure—Matter of Private Concern)*, may be used in this type of case.

Use the bracketed element 3 only if the statement is not defamatory on its face (i.e., if the judge has not determined that the statement is defamatory as a matter of law). For statutory grounds of defamation per se, see Civil Code sections 45 (libel) and 46 (slander). Note that certain specific grounds of libel per se have been defined by case law.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., *Civ. Code, § 47(d); J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

For statutes and cases on libel and slander and on the difference between defamation per se and defamation per quod, see the Sources and Authority to CACI No. 1700, *Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

### Sources and Authority

- “Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage.” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645 [85 Cal.Rptr.2d 397].)
- “The question whether a plaintiff is a public figure [or not] is to be determined by the court, not the jury.” (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203-204 [35 Cal.Rptr.2d 740], internal citation omitted.)

- The jury should be instructed that the defendant’s negligence is an element of libel if the plaintiff is a private figure. (*Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1016 [271 Cal.Rptr. 30].)
- “A private-figure plaintiff must prove at least negligence to recover any damages and, when the speech involves a matter of public concern, he must also prove *New York Times* malice ... to recover presumed or punitive damages.” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 747 [257 Cal.Rptr. 708, 771 P.2d 406].)
- “The First Amendment trumps the common law presumption of falsity in defamation cases involving private-figure plaintiffs when the allegedly defamatory statements pertain to a matter of public interest.” (*Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364, 375 [54 Cal.Rptr.2d 781].)
- “Thus, in a defamation action the burden is normally on the defendant to prove the truth of the allegedly defamatory communications. However, in accommodation of First Amendment considerations (which are implicated by state defamation laws), where the plaintiff is a public figure, the ‘public-figure plaintiff must show the falsity of the statements at issue in order to prevail in a suit for defamation.’ ” (*Stolz, supra*, 30 Cal.App.4th at p. 202, internal citations omitted.)
- “Since the statements at issue here involved a matter of purely private concern communicated between private individuals, we do not regard them as raising a First Amendment issue. ‘While such speech is not totally unprotected by the First Amendment, its protections are less stringent’ [than that applying to speech on matters of public concern].” (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 445 [26 Cal.Rptr.2d 305], quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985) 472 U.S. 749, 760 [105 S.Ct. 2939, 86 L.Ed.2d 593], internal citation omitted.)
- “We conclude that permitting recovery of presumed and punitive damages in defamation cases absent a showing of ‘actual malice’ does not violate the First Amendment when the defamatory statements do not involve matters of public concern.” (*Dun & Bradstreet, Inc., supra*, 472 U.S. at p. 763.)
- “When the speech is of exclusively private concern and the plaintiff is a private figure, as in *Dun & Bradstreet*, the constitutional requirements do not necessarily force any change in at least some of the features of the common-law landscape.” (*Philadelphia Newspapers, Inc. v. Hepps* (1986) 475 U.S. 767, 775 [106 S.Ct. 1558, 89 L.Ed.2d 783].)
- “[T]he jury was instructed that if it found that defendant published matter that was defamatory on its face and it found by clear and convincing evidence that defendant knew the statement was false or published it in reckless disregard of whether it was false, then the jury ‘also may award plaintiff presumed general damages.’ Presumed damages ‘are those damages that necessarily result from the publication of defamatory matter and are presumed to exist. They include reasonable compensation for loss of reputation, shame, mortification, and hurt feeling. No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for presumed damages, and no evidence of actual harm is required. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for presumed damages, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence. You may in the exercise of your discretion award nominal damages only,

namely an insignificant sum such as one dollar.’ [¶¶] ... [T]he instant instruction, which limits damages to ‘those damages that necessarily result from the publication of defamatory matter,’ constitutes substantial compliance with [Civil Code] section 3283. Thus, the instant instructions, ‘if obeyed, did not allow the jurors to “enter the realm of speculation” regarding future suffering.’ ” (*Sommer v. Gabor* (1995) 40 Cal.App.4th 1455, 1472–1473 [48 Cal.Rptr.2d 235], internal citations omitted.)

- “In defamation actions generally, factual truth is a defense which it is the defendant’s burden to prove. In a defamation action against a newspaper by a private person suing over statements of public concern, however, the First Amendment places the burden of proving falsity on the plaintiff.” (*Eisenberg v. Alameda Newspapers* (1999) 74 Cal.App.4th 1359, 1382 [88 Cal.Rptr.2d 802].)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 615

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, § 340.18 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, § 142.87 (Matthew Bender)

| [California Civil Practice: Torts](#), §§ 21:1–21:2, 21:22–21:25, 21:51 (Thomson Reuters)

**1705. Defamation per quod—Essential Factual Elements (Private Figure—Matter of Private Concern)**

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*[Name of plaintiff]* claims that *[name of defendant]* harmed *[him/her]* by making *[one or more of]* the following statement(s): *[insert all claimed per quod defamatory statements]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

*Liability*

1. That *[name of defendant]* made *[one or more of]* the statement(s) to *[a person/persons]* other than *[name of plaintiff]*;
2. That *[this person/these people]* reasonably understood that the statement(s) *[was/were]* about *[name of plaintiff]*;
3. That because of the facts and circumstances known to the *[listener(s)/reader(s)]* of the statement(s), *[it/they]* tended to injure *[name of plaintiff]* in *[his/her]* occupation *[or to expose [him/her] to hatred, contempt, ridicule, or shame]* *[or to discourage others from associating or dealing with [him/her]]*;
4. That *[name of defendant]* failed to use reasonable care to determine the truth or falsity of the statement(s);
5. That *[name of plaintiff]* suffered harm to *[his/her]* property, business, profession, or occupation *[including money spent as a result of the statement(s)]*; and
6. That the statement(s) *[was/were]* a substantial factor in causing *[name of plaintiff]*'s harm.

*Actual Damages*

If *[name of plaintiff]* has proved all of the above, then *[he/she]* is entitled to recover if *[he/she]* proves that *[name of defendant]*'s wrongful conduct was a substantial factor in causing any of the following actual damages:

- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation;
- b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements;
- c. Harm to *[name of plaintiff]*'s reputation; or
- d. Shame, mortification, or hurt feelings.

*Punitive Damages*

*[Name of plaintiff]* may also recover damages to punish *[name of defendant]* if *[he/she]* proves by

**clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud.**

[For specific provisions, see CACI Nos. 3940–3949.]

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New September 2003; Revised April 2008, December 2009, June 2016, December 2016

### Directions for Use

Special verdict form VF-1705, *Defamation per quod (Private Figure—Matter of Private Concern)*, should be used in this type of case.

Presumed damages either are not available or will likely not be sought in a per quod case.

An additional element of a defamation claim is that the alleged defamatory statement is “unprivileged.” (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118 [166 Cal.Rptr.3d 569].) If this element presents an issue for the jury, an instruction on the “unprivileged” element should be given.

Under the common-interest privilege of Civil Code section 47(c), the defendant bears the initial burden of showing facts to bring the communication within the privilege. The plaintiff then must prove that the statement was made with malice. (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1203 [31 Cal.Rptr.2d 776, 875 P.2d 1279].) If the common-interest privilege is at issue, give CACI No. 1723, *Common Interest Privilege—Malice*. The elements of CACI No. 1723 constitute the “unprivileged” element of this basic claim. If some other privilege is at issue, an additional element or instruction targeting that privilege will be required. (See, e.g., *Civ. Code, § 47(d); J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87 [201 Cal.Rptr.3d 782] [privileged publication or broadcast].)

For statutes and cases on libel and slander and on the difference between defamation per se and defamation per quod, see the Sources and Authority to CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.

### Sources and Authority

- Libel per se. Civil Code section 45a.
- Special Damages. Civil Code section 48a(4)(b).
- “Libel is recognized as either being per se (on its face), or per quod (literally meaning, ‘whereby’), and each requires a different standard of pleading.” (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5 [86 Cal.Rptr.2d 73].)
- “If [a] defamatory meaning would appear only to readers who might be able to recognize it through some knowledge of specific facts and/or circumstances, not discernible from the face of the publication, and which are not matters of common knowledge rationally attributable to all reasonable persons, then the libel cannot be libel per se but will be libel per quod.” (*Palm Springs Tennis Club*,



*supra*, 73 Cal.App.4th at p. 5, internal citation omitted.)

- “In pleading a case of libel per quod the plaintiff cannot assume that the court has access to the reader’s special knowledge of extrinsic facts but must specially plead and prove those facts.” (*Palm Springs Tennis Club, supra*, 73 Cal.App.4th at p. 7, footnote omitted.)
- “A libel ‘per quod’ ... requires that the injurious character or effect be established by allegation and proof.” (*Slaughter v. Friedman* (1982) 32 Cal.3d 149, 153-154 [185 Cal.Rptr. 244, 649 P.2d 886].)
- “In the libel context, ‘inducement’ and ‘innuendo’ are terms of art: ‘[W]here the language is ambiguous and an explanation is necessary to establish the defamatory meaning, the pleader must do two things: (1) allege his interpretation of the defamatory meaning of the language (the “innuendo,” ... ); (2) support that interpretation by alleging facts showing that the readers or hearers to whom it was published would understand it in that defamatory sense (the “inducement”).’ ” (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 387 [226 Cal.Rptr. 354].)
- “A defamatory publication not libelous on its face is not actionable unless the plaintiff alleges that he has suffered special damages as a result thereof.” (*Selleck v. Globe Int’l, Inc.* (1985) 166 Cal.App.3d 1123, 1130 [212 Cal.Rptr. 838].)
- “The question whether a statement is reasonably susceptible to a defamatory interpretation is a question of law for the trial court. Only once the court has determined that a statement is reasonably susceptible to such a defamatory interpretation does it become a question for the trier of fact whether or not it was so understood.” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 647 [85 Cal.Rptr.2d 397], internal citations omitted.)
- Private-figure plaintiffs must prove actual malice to recover punitive or presumed damages for defamation if the matter is one of public concern. They are required to prove only negligence to recover damages for actual injury to reputation. (*Khawar v. Globe Internat.* (1998) 19 Cal.4th 254, 273-274 [79 Cal.Rptr.2d 178, 965 P.2d 696].)
- If the language is not defamatory on its face, there is no distinction between libel and slander: “In either case, the fact that a statement is not defamatory on its face requires only that the plaintiff plead and prove the defamatory meaning and special damages.” (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 447 [26 Cal.Rptr.2d 305].)
- A plaintiff must prove that the defendant was at least negligent in failing to ascertain the truth or falsity of the statement. (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 345-347 [94 S.Ct. 2997, 41 L.Ed.2d 789].)
- “The question whether a plaintiff is a public figure is to be determined by the court, not the jury.” (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203-204 [35 Cal.Rptr.2d 740], internal citation omitted.)

### **Secondary Sources**

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 529–555, 615

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.04, 45.13 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, §§ 340.12–340.13 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, §§ 142.20–142.32 (Matthew Bender)

1 California Civil Practice: Torts §§ 21:1–21:2, 21:22–21:25, 21:51 (Thomson Reuters)

## 1707. Fact Versus Opinion

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**For [name of plaintiff] to recover, [name of defendant]’s statement(s) must have been [a] statement(s) of fact, not opinion. A statement of fact is one that can be proved to be true or false. In some circumstances, [name of plaintiff] may recover if a statement phrased as an opinion implies that a false statement of fact is true.**

**In deciding this issue, you should consider whether the average [reader/listener] would conclude from the language of the statement and its context that [name of defendant] was implying that a false statement of fact is true.**

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*New September 2003; Revised June 2013*

### Directions for Use

Give this instruction only if the court concludes that a statement could reasonably be construed as implying a false assertion of fact. (See *Campanelli v. Regents of Univ. of Cal.* (1996) 44 Cal.App.4th 572, 578 [51 Cal.Rptr.2d 891].)

### Sources and Authority

- “ ‘Because [a defamatory] statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected. [Citation.]’ That does not mean that statements of opinion enjoy blanket protection. On the contrary, where an expression of opinion implies a false assertion of fact, the opinion can constitute actionable defamation. The ‘crucial question of whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court. [Citation.]’ ‘Only once the court has determined that a statement is reasonably susceptible to such a defamatory interpretation does it become a question for the trier of fact whether or not it was so understood. [Citations.]’ ” (*Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 695–696 [142 Cal.Rptr.3d 40], internal citations omitted.)
- “Thus, our inquiry is not merely whether the statements are fact or opinion, but ‘ ‘whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact.’ ” ( *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 289 [147 Cal.Rptr.3d 88].)
- “In defining libel and slander, Civil Code sections 45 and 46 both refer to a ‘false ... publication ... .’ This statutory definition can be meaningfully applied only to statements that are capable of being proved as false or true.” (*Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434, 445 [26 Cal.Rptr.2d 305].)
- “Thus, ‘rhetorical hyperbole,’ ‘vigorous epithet[s],’ ‘lusty and imaginative expressions[s] of ... contempt,’ and language used ‘in a loose, figurative sense’ have all been accorded constitutional

protection.” (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401 [88 Cal.Rptr.2d 843].)

- “Deprecatory statements regarding the merits of litigation are “nothing more than ‘the predictable opinion’ of one side to the lawsuit” and cannot be the basis for a defamation claim.” (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 156 [162 Cal.Rptr.3d 831].)
- “If a speaker says, ‘In my opinion John Jones is a liar,’ he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact.” (*Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 18 [110 S.Ct. 2695, 111 L.Ed.2d 1].)
- “[W]hen a communication identifies non-defamatory facts underlying an opinion, or the recipient is otherwise aware of those facts, a negative statement of opinion is not defamatory. As explained in the Restatement Second of Torts, a ‘pure type of expression of opinion’ occurs ‘when both parties to the communication know the facts or assume their existence and the comment is clearly based on those assumed facts and does not imply the existence of other facts in order to justify the comment. The assumption of the facts may come about because someone else has stated them or because they were assumed by both parties as a result of their notoriety or otherwise.’ Actionable statements of opinion are ‘the mixed type, [where] an opinion in form or context, is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant [but] gives rise to the inference that there are undisclosed facts that justify the forming of the opinion.’” (*John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1314 [-- Cal.Rptr.3d --], internal citation omitted.)
- “Even if an opinion can be understood as implying facts capable of being proved true or false, however, it is not actionable if it also discloses the underlying factual bases for the opinion and those statements are true.” (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 100 [201 Cal.Rptr.3d 782].)
- “California courts have developed a ‘totality of the circumstances’ test to determine whether an alleged defamatory statement is one of fact or of opinion. First, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense. Where the language of the statement is ‘cautiously phrased in terms of apparency,’ the statement is less likely to be reasonably understood as a statement of fact rather than opinion.” (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 260 [228 Cal.Rptr. 206, 721 P.2d 87].)
- “The court must put itself in the place of an average reader and decide the natural and probable effect of the statement.” (*Hofmann Co. v. E.I. Du Pont de Nemors & Co.* (1988) 202 Cal.App.3d 390, 398 [248 Cal.Rptr. 384].)
- “[S]ome statements are ambiguous and cannot be characterized as factual or nonfactual as a matter of law. ‘In these circumstances, it is for the jury to determine whether an ordinary reader would have understood the article as a factual assertion ... .’” (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1608 [284 Cal.Rptr. 244], internal citations omitted.)
- “Whether a challenged statement ‘declares or implies a provable false assertion of fact is a question

of law for the court to decide ... , unless the statement is susceptible of both an innocent and a libelous meaning, in which case the jury must decide how the statement was understood.’ ” (*Overhill Farms, Inc. v. Lopez* (2010) 190 Cal.App.4th 1248, 1261 [119 Cal.Rptr.3d 127].)

- “We next turn to the broader context of his statements—posting on an Internet site under an assumed user name. [Defendant] contends Internet fora are notorious as ‘places where readers expect to see strongly worded opinions rather than objective facts,’ and that ‘anonymous, or pseudonymous,’ opinions should be ‘ “discount[ed] ... accordingly.” ’ However, the mere fact speech is broadcast across the Internet by an anonymous speaker does not ipso facto make it nonactionable opinion and immune from defamation law.” (*Bently Reserve LP v. Papaliolios* (2013) 218 Cal.App.4th 418, 429 [160 Cal.Rptr.3d 423], internal citation omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 546, 547, 549

4 Levy et al., California Torts, Ch. 45, *Defamation*, §§ 45.05–45.06 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, § 340.16 (Matthew Bender)

14 California Points and Authorities, Ch. 142, *Libel and Slander (Defamation)*, § 142.86 (Matthew Bender)

1 California Civil Practice: Torts §§ 21:20–21:21 (Thomson Reuters)

**1731. Trade Libel—Essential Factual Elements**

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**[Name of plaintiff] claims that [name of defendant] harmed [him/her] by making a statement that disparaged [name of plaintiff]’s [specify product]. To establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of defendant] made a statement that [would be clearly or necessarily understood to have] disparaged the quality of [name of plaintiff]’s [product/service];**
- 2. That the statement was made to a person other than [name of plaintiff];**
- 3. That the statement was untrue;**
- 4. That [name of defendant] [knew that the statement was untrue/acted with reckless disregard of the truth or falsity of the statement];**
- 5. That [name of defendant] knew or should have recognized that someone else might act in reliance on the statement, causing [name of plaintiff] financial loss;**
- 6. That [name of plaintiff] suffered direct financial harm because someone else acted in reliance on the statement; and**
- 7. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.**

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*New December 2013; Revised June 2015*

**Directions for Use**

The tort of trade libel is a form of injurious falsehood similar to slander of title. (See *Polygram Records, Inc. v. Superior Court* (1985) 170 Cal.App.3d 543, 548 [216 Cal.Rptr. 252]; *Erlich v. Etner* (1964) 224 Cal.App.2d 69, 74 [36 Cal.Rptr. 256].) The tort has not often reached the attention of California’s appellate courts (see *Polygram Records, Inc., supra*, 170 Cal.App.3d at p. 548.), perhaps because of the difficulty in proving damages. (See *Erlich, supra*, 224 Cal.App.2d at pp. 73–74.)

Include the optional language in element 1 if the plaintiff alleges that disparagement may be reasonably implied from the defendant’s words. Disparagement by reasonable implication requires more than a statement that may conceivably or plausibly be construed as derogatory. A “reasonable implication” means a clear or necessary inference. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 295 [172 Cal.Rptr.3d 653, 326 P.3d 253].)

Elements 4 and 5 are supported by section 623A of the Restatement 2d of Torts, which has been accepted in California. (See *Melaleuca, Inc. v. Clark* (1998) 66 Cal.App.4th 1344, 1360–1361 [78 Cal.Rptr.2d 627].) There is some authority, however, for the proposition that no intent or reckless disregard is

required (element 4) if the statement was understood in its disparaging sense and if the understanding is a reasonable construction of the language used or the acts done by the publisher. (See *Nichols v. Great Am. Ins. Cos.* (1985) 169 Cal.App.3d 766, 773 [215 Cal.Rptr. 416].)

The privileges of Civil Code section 47 almost certainly apply to actions for trade libel. (See *Albertson v. Raboff* (1956) 46 Cal.2d 375, 378–379 [295 P.2d 405] [slander-of-title case]; *117 Sales Corp. v. Olsen* (1978) 80 Cal.App.3d 645, 651 [145 Cal.Rptr. 778] [publication by filing small claims suit is absolutely privileged].) The defendant has the burden of proving privilege as an affirmative defense. (See *Smith v. Commonwealth Land Title Ins. Co.* (1986) 177 Cal.App.3d 625, 630–631 [223 Cal.Rptr. 339].) If privilege is claimed, additional instructions will be necessary to state the affirmative defense and frame the privilege. For further discussion, see the Directions for Use to CACI No. 1730, *Slander of Title—Essential Factual Elements*. See also CACI No. 1723, *Common Interest Privilege—Malice*.

Limitations on liability arising from the First Amendment apply. (*Hofmann Co. v. E. I. du Pont de Nemours & Co.* (1988) 202 Cal.App.3d 390, 397 [248 Cal.Rptr. 384]; see CACI Nos. 1700–1703, instructions on public figures and matters of public concern.) See also CACI No. 1707, *Fact Versus Opinion*.

### Sources and Authority

- “Trade libel is the publication of matter disparaging the quality of another's property, which the publisher should recognize is likely to cause pecuniary loss to the owner. [Citation.] The tort encompasses ‘all false statements concerning the quality of services or product of a business which are intended to cause that business financial harm and in fact do so.’ [Citation.] [¶] To constitute trade libel, a statement must be false.” (*City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 376 [154 Cal.Rptr.3d 698].)
- “To constitute trade libel the statement must be made with actual malice, that is, with knowledge it was false or with reckless disregard for whether it was true or false.” (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 97 [201 Cal.Rptr.3d 782].)
- “The distinction between libel and trade libel is that the former concerns the person or reputation of plaintiff and the latter relates to his goods.” (*Shores v. Chip Steak Co.* (1955) 130 Cal.App.2d 627, 630 [279 P.2d 595].)
- “[A]n action for ‘slander of title’ ... is a form of action somewhat related to trade libel ... .” (*Erlich, supra*, 224 Cal.App.2d at p. 74.)
- “Confusion surrounds the tort of ‘commercial disparagement’ because not only is its content blurred and uncertain, so also is its very name. The tort has received various labels, such as ‘commercial disparagement,’ ‘injurious falsehood,’ ‘product disparagement,’ ‘trade libel,’ ‘disparagement of property,’ and ‘slander of goods.’ These shifting names have led counsel and the courts into confusion, thinking that they were dealing with different bodies of law. In fact, all these labels denominate the same basic legal claim.” (*Hartford Casualty Ins. Co., supra*, 59 Cal.4th at p. 289.)

- “The protection the common law provides statements which disparage products as opposed to reputations is set forth in the Restatement Second of Torts sections 623A and 626. Section 623A provides: ‘One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if [P] (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and [P](b) *he knows that the statement is false or acts in reckless disregard of its truth or falsity.*’ [¶] Section 626 of Restatement Second of Torts in turn states: ‘The rules on liability for the publication of an injurious falsehood stated in § 623A apply to the publication of matter disparaging the quality of another's land, chattels or intangible things, that the publisher should recognize as likely to result in pecuniary loss to the other through the conduct of a third person in respect to the other's interests in the property.’ ” (*Melaleuca, Inc., supra*, 66 Cal.App.4th at pp. 1360–1361, original italics.)
- “According to section 629 of the Restatement Second of Torts (1977), ‘[a] statement is disparaging if it is understood to cast doubt upon the quality of another's land, chattels or intangible things, or upon the existence or extent of his property in them, and [¶] (a) the publisher intends the statement to cast the doubt, or [¶] (b) the recipient's understanding of it as casting the doubt was reasonable.’ ” (*Hartford Casualty Ins. Co., supra*, 59 Cal.4th at p. 288.)
- “What distinguishes a claim of disparagement is that an injurious falsehood has been directed *specifically* at the plaintiff's business or product, derogating that business or product and thereby causing that plaintiff special damages.” (*Hartford Casualty Ins. Co., supra*, 59 Cal.4th at p. 294, original italics.)
- “The Restatement [2d Torts] view is that, like slander of title, what is commonly called ‘trade libel’ is a particular form of the tort of injurious falsehood and need not be in writing.” (*Polygram Records, Inc., supra*, 170 Cal.App.3d at p. 548.)
- “While ... general damages are presumed in a libel of a businessman, this is not so in action for trade libel. Dean Prosser has discussed the problems in such actions as follows: ‘Injurious falsehood, or disparagement, then, may consist of the publication of matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general, . . . The cause of action founded upon it resembles that for defamation, but differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases. . . . [The] plaintiff must prove in all cases that the publication has played a material and substantial part in inducing others not to deal with him, and that as a result he has suffered special damages. . . . Usually, . . . the damages claimed have consisted of loss of prospective contracts with the plaintiff's customers. Here the remedy has been so hedged about with limitations that its usefulness to the plaintiff has been seriously impaired. It is nearly always held that it is not enough to show a general decline in his business resulting from the falsehood, even where no other cause for it is apparent, and that it is only the loss of specific sales that can be recovered. This means, in the usual case, that the plaintiff must identify the particular purchasers who have refrained from dealing with him, and specify the transactions of which he claims to have been deprived.’ ” (*Erlich, supra*, 224 Cal.App. 2d at pp. 73–74.)
- “Because the gravamen of the complaint is the allegation that respondents made false statements



of fact that injured appellant's business, the 'limitations that define the First Amendment's zone of protection' are applicable. '[It] is immaterial for First Amendment purposes whether the statement in question relates to the plaintiff himself or merely to his property . . . .' (*Hofmann Co., supra*, 202 Cal.App.3d at p. 397, internal citation omitted.)

- “If respondents' statements about appellant are opinions, the cause of action for trade libel must of course fail. ‘Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.’ Statements of fact can be true or false, but an opinion—‘a view, judgment, or appraisal formed in the mind . . . [a] belief stronger than impression and less strong than positive knowledge’—is the result of a mental process and not capable of proof in terms of truth or falsity.” (*Hofmann Co., supra*, 202 Cal.App.3d at p. 397, footnote and internal citation omitted.)
- “[I]t is not absolutely necessary that the disparaging publication be intentionally designed to injure. If the statement was understood in its disparaging sense and if the understanding is a reasonable construction of the language used or the acts done by the publisher, it is not material that the publisher did not intend the disparaging statement to be so understood.” (*Nichols, supra*, 169 Cal.App.3d at p. 773.)
- “Disparagement by ‘reasonable implication’ requires more than a statement that may conceivably or plausibly be construed as derogatory to a specific product or business. A ‘reasonable implication’ in this context means a clear or necessary inference.” (*Hartford Casualty Ins. Co., supra*, 59 Cal.4th at p. 295, internal citations omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 642-645

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.70 et seq. (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 340, *Libel and Slander*, § 340.103 (Matthew Bender)

1 Matthew Bender Practice Guide: California Unfair Competition and Business Torts, Ch. 9, *Commercial Defamation*, 9.04

**1810. Distribution of Private Sexually Explicit Materials—Essential Factual Elements (Civ. Code, § 1708.85)**

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

- 1. That [name of defendant] intentionally distributed by [specify means, e.g., posting online] [a] [photograph(s)/film(s)/videotape(s)/recording(s)/[specify other reproduction]] of [name of plaintiff];**
- 2. That [name of plaintiff] did not consent to the distribution of the [specify, e.g., photographs];**
- 3. That [name of defendant] knew that [name of plaintiff] had a reasonable expectation that the [e.g., photographs] would remain private;**
- 4. That the [e.g., photographs] [exposed an intimate body part of [name of plaintiff]/ [or] showed [name of plaintiff] engaging in an act of [intercourse/oral copulation/sodomy/ [or] [specify other act of sexual penetration]]];**
- 5. That [name of plaintiff] was harmed; and**
- 6. That [name of defendant]’s conduct was a substantial factor in causing [name of plaintiff]’s harm.**

**[An “intimate body part” is any part of the genitals], and, in the case of a female, also includes any portion of the breast below the top of the areola,] that is uncovered or visible through less than fully opaque clothing.]**

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*New December 2015*

**Directions for Use**

This instruction is for use for an invasion-of-privacy cause of action for the dissemination of sexually explicit materials. (See Civ. Code, § 1708.85(a).) It may not be necessary to include the last definitional paragraph as the court may rule as a matter of law that an intimate body part has been distributed. (See Civ. Code, § 1708.85(b).)

The plaintiff’s harm (element 5) is general or special damages as defined in subdivision (d)4 of Civil Code section 48a. (Civ. Code, § 1708.85(a).) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings. (Civ. Code, § 48a(d)(1)4(a).) "Special damages" are essentially economic loss. (Civ. Code, § 48a(d)(2)4(b).)

**Sources and Authority**

- Right of Action Against Distributor of Private Sexually Explicit Material. Civil Code section

1708.85

- General and Special Damages. Civil Code section 48a~~(d)(1), (2)~~4(a), (b)

***Secondary Sources***

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.07 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.36A (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.25B (Matthew Bender)

## 1900. Intentional Misrepresentation

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[*Name of plaintiff*] **claims that** [*name of defendant*] **made a false representation that harmed** [*him/her/it*]. **To establish this claim, [*name of plaintiff*] must prove all of the following:**

1. **That** [*name of defendant*] **represented to** [*name of plaintiff*] **that a fact was true;**
  2. **That** [*name of defendant*]'s **representation was false;**
  3. **That** [*name of defendant*] **knew that the representation was false when** [*he/she*] **made it, or that** [*he/she*] **made the representation recklessly and without regard for its truth;**
  4. **That** [*name of defendant*] **intended that** [*name of plaintiff*] **rely on the representation;**
  5. **That** [*name of plaintiff*] **reasonably relied on** [*name of defendant*]'s **representation;**
  6. **That** [*name of plaintiff*] **was harmed; and**
  7. **That** [*name of plaintiff*]'s **reliance on** [*name of defendant*]'s **representation was a substantial factor in causing** [*his/her/its*] **harm.**
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*New September 2003; Revised December 2012, December 2013*

### Directions for Use

Give this instruction in a case in which it is alleged that the defendant made an intentional misrepresentation of fact. (See Civ. Code, § 1710(1).) If element 5 is contested, give CACI No. 1907, *Reliance*, and CACI No. 1908, *Reasonable Reliance*. If it is disputed that a representation was made, the jury should be instructed that “a representation may be made orally, in writing, or by nonverbal conduct.” (See *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1567 [54 Cal.Rptr.2d 468].)

The representation must ordinarily be an affirmation of fact, as opposed to an opinion. (See *Cohen v. S&S Construction Co.* (1983) 151 Cal.App.3d 941, 946 [201 Cal.Rptr. 173].) Opinions are addressed in CACI No. 1904, *Opinions as Statements of Fact*.

### Sources and Authority

- Actionable Deceit. Civil Code section 1709.
- Intentional Misrepresentation. Civil Code section 1710(1).

- Fraud in Contract Formation. Civil Code section 1572.
- “The elements of fraud that will give rise to a tort action for deceit are: ‘(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974 [64 Cal.Rptr.2d 843, 938 P.2d 903], internal quotation marks omitted.)
- “A complaint for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages.” (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816 [52 Cal.Rptr.2d 650] [combining misrepresentation and scienter as a single element].)
- “Puffing,” or sales talk, is generally considered opinion, unless it involves a representation of product safety. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 112 [120 Cal.Rptr. 681, 534 P.2d 377].)
- “Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 482 [80 Cal.Rptr.2d 329], internal citations omitted.)
- “[F]raudulent intent is an issue for the trier of fact to decide.” (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061 [141 Cal.Rptr.3d 142].)
- “[T]he trial court failed to consider that a cause of action based in fraud may arise from conduct that is designed to mislead, and not only from verbal or written statements.” (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 839 [199 Cal.Rptr.3d 901]) ~~“A misrepresentation need not be oral; it may be implied by conduct.”~~ (*Thrifty-Tel, Inc.*, *supra*, 46 Cal.App.4th at p. 1567, internal citations omitted.)
- “‘[F]alse representations made recklessly and without regard for their truth in order to induce action by another are the equivalent of misrepresentations knowingly and intentionally uttered.’” (*Engalla, supra*, 15 Cal.4th at p. 974, quoting *Yellow Creek Logging Corp. v. Dare* (1963) 216 Cal.App.2d 50, 55 [30 Cal.Rptr. 629].)
- “[T]here are two causation elements in a fraud cause of action. First, the plaintiff’s actual and justifiable reliance on the defendant’s misrepresentation must have caused him to take a detrimental course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged damage.” (*Beckwith, supra*, 205 Cal.App.4th at p. 1062.)
- “A ‘complete causal relationship’ between the fraud or deceit and the plaintiff’s damages is required. ... Causation requires proof that the defendant’s conduct was a ‘“substantial factor”’ in bringing about the harm to the plaintiff.” (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132 [39 Cal.Rptr.2d 658], internal citations omitted.)

- “ “ “ “ “Misrepresentation, even maliciously committed, does not support a cause of action unless the plaintiff suffered consequential damages.” ’ ’ [Citation.] [Citation.] Indeed, ‘ “ ‘[a]ssuming . . . a claimant's reliance on the actionable misrepresentation, no liability attaches if the damages sustained were otherwise inevitable or due to unrelated causes.’ [Citation.]” [Citation.] [If the defrauded plaintiff would have suffered the alleged damage even in the absence of the fraudulent inducement, causation cannot be alleged and a fraud cause of action cannot be sustained.’ ” (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1008 [198 Cal.Rptr.3d 715]) In order to recover for fraud, as in any other tort, the plaintiff must plead and prove the ‘detriment proximately caused’ by the defendant’s tortious conduct. Deception without resulting loss is not actionable fraud.” (*Service by Medallion, Inc., supra*, 44 Cal.App.4th at p. 1818, internal citations omitted.)
- “The law is well established that actionable misrepresentations must pertain to past or existing material facts. Statements or predictions regarding future events are deemed to be mere opinions which are not actionable.” (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 [169 Cal.Rptr.3d 619], internal citation omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 243, 767–817, 821, 822, 826

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, §§ 40.02, 40.05 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 269, *Fraud and Deceit*, § 269.19 (Matthew Bender)

10 California Points and Authorities, Ch. 105, *Fraud and Deceit*, § 105.80 et seq. (Matthew Bender)

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

### 1903. Negligent Misrepresentation

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*[Name of plaintiff]* claims *[he/she/it]* was harmed because *[name of defendant]* negligently misrepresented a fact. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* represented to *[name of plaintiff]* that a fact was true;
  2. That *[name of defendant]*'s representation was not true;
  3. That **although** *[name of defendant]* may have honestly believed that the representation was true, *[[name of defendant]/he/she]* had no reasonable grounds for believing the representation was true when *[he/she]* made it;
  4. That *[name of defendant]* intended that *[name of plaintiff]* rely on this representation;
  5. That *[name of plaintiff]* reasonably relied on *[name of defendant]*'s representation;
  6. That *[name of plaintiff]* was harmed; and
  7. That *[name of plaintiff]*'s reliance on *[name of defendant]*'s representation was a substantial factor in causing *[his/her/its]* harm.
- 

*New September 2003; Revised December 2009, December 2013*

#### Directions for Use

Give this instruction in a case in which it is alleged that the defendant made certain representations with no reason to believe that they were true. (See Civ. Code, § 1710(2).) If element 5 is contested, give CACI No. 1907, *Reliance*, and CACI No. 1908, *Reasonable Reliance*.

If both negligent misrepresentation and intentional misrepresentation are alleged in the alternative, give both this instruction and CACI No. 1900, *Intentional Misrepresentation*. If only negligent misrepresentation is alleged, the bracketed reference to the defendant's honest belief in the truth of the representation in element 3 may be omitted. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

#### Sources and Authority

- Negligent Misrepresentation. Civil Code section 1710.
- “Negligent misrepresentation is a separate and distinct tort, a species of the tort of deceit. ‘Where the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit.’ ” (*Bily, supra*, 3 Cal.4th at pp. 407, internal citations omitted.)

- “This is not merely a case where the defendants made false representations of matters within their personal knowledge which they had *no reasonable grounds for believing to be true*. Such acts clearly would constitute actual fraud under California law. In such situations the defendant *believes* the representations to be true but is without reasonable grounds for such belief. His liability is based on negligent misrepresentation which has been made a form of actionable deceit. On the contrary, in the instant case, the court found that the defendants *did not believe* in the truth of the statements. Where a person makes statements which he does not believe to be true, in a reckless manner without knowing whether they are true or false, the element of scienter is satisfied and he is liable for intentional misrepresentation.” (*Yellow Creek Logging Corp. v. Dare* (1963) 216 Cal.App.2d 50, 57 [30 Cal.Rptr. 629], original italics, internal citations omitted.)
- “The elements of negligent misrepresentation are (1) a misrepresentation of a past or existing material fact, (2) made without reasonable ground for believing it to be true, (3) made with the intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.” (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 196 [147 Cal.Rptr.3d 41].)
- “ ‘To be actionable deceit, the representation need not be made with knowledge of actual falsity, but need only be an “assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true” and made “with intent to induce [the recipient] to alter his position to his injury or his risk. ...” ’ The elements of negligent misrepresentation also include justifiable reliance on the representation, and resulting damage.” (*B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823, 834 [64 Cal.Rptr.2d 335], internal citations omitted.)
- “[Plaintiffs] do not allege negligence. They allege negligent misrepresentation. They are different torts, as the Supreme Court expressly observed in [*Bily, supra*, 3 Cal.4th at p. 407]: ‘[N]either the courts (ourselves included), the commentators, nor the authors of the Restatement Second of Torts have made clear or careful distinctions between the tort of negligence and the separate tort of negligent misrepresentation. The distinction is important not only because of the different statutory bases of the two torts, but also because it has practical implications for the trial of cases in complex areas ... . [¶] Negligent misrepresentation is a separate and distinct tort, a species of the tort of deceit.’ In short, the elements of each tort are different. Perhaps more importantly, the policies behind each tort sometimes call for different results even when applied to the same conduct.” (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 227–228 [170 Cal.Rptr.3d 293].)
- “As is true of negligence, responsibility for negligent misrepresentation rests upon the existence of a legal duty, imposed by contract, statute or otherwise, owed by a defendant to the injured person. The determination of whether a duty exists is primarily a question of law.” (*Eddy v. Sharp* (1988) 199 Cal.App.3d 858, 864 [245 Cal.Rptr. 211], internal citations omitted.)
- “The tort of negligent misrepresentation is similar to fraud, except that it does not require scienter or an intent to defraud. ... [T]he same elements of intentional fraud also comprise a cause of action for negligent misrepresentation, with the exception that there is no requirement of intent to induce reliance ... .” (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 845 [199 Cal.Rptr.3d 901], internal citation omitted.)



- “ “Where the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit.” ’ If defendant’s belief ‘is both honest and reasonable, the misrepresentation is innocent and there is no tort liability.’ ” (*Diediker v. Peelle Financial Corp.* (1997) 60 Cal.App.4th 288, 297 [70 Cal.Rptr.2d 442], internal citations omitted.)
- “Parties cannot read something into a neutral statement in order to justify a claim for negligent misrepresentation. The tort requires a ‘positive assertion.’ ‘An “implied” assertion or representation is not enough.’ ” (*Diediker, supra*, 60 Cal.App.4th at pp. 297-298, internal citations omitted.)
- “Whether a defendant had reasonable ground for believing his or her false statement to be true is ordinarily a question of fact.” (*Quality Wash Group V, Ltd. v. Hallak* (1996) 50 Cal.App.4th 1687, 1696 [58 Cal.Rptr.2d 592], internal citations omitted.)
- “[T]here are two causation elements in a fraud cause of action. First, the plaintiff’s actual and justifiable reliance on the defendant’s misrepresentation must have caused him to take a detrimental course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged damage.” (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1062 [141 Cal.Rptr.3d 142].)
- “The law is well established that actionable misrepresentations must pertain to past or existing material facts. Statements or predictions regarding future events are deemed to be mere opinions which are not actionable.” (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 [169 Cal.Rptr.3d 619], internal citation omitted.)
- “Where, as here, a negligent misrepresentation claim is brought against the provider of a professional opinion based on special knowledge, information or expertise regarding a company’s value, the California Supreme Court requires the following: ‘The representation must have been made with the intent to induce plaintiff, or a particular class of persons to which plaintiff belongs, to act in reliance upon the representation in a specific transaction, or a specific type of transaction, that defendant intended to influence. Defendant is deemed to have intended to influence [its client’s] transaction with plaintiff whenever defendant knows with substantial certainty that plaintiff, or the particular class of persons to which plaintiff belongs, will rely on the representation in the course of the transaction. [However,] [i]f others become aware of the representation and act upon it, there is no liability even though defendant should reasonably have foreseen such a possibility.’ ” (*Public Employees’ Retirement System v. Moody’s Investors Service, Inc.* (2014) 226 Cal.App.4th 643, 667–668 [172 Cal.Rptr.3d 238].)

### Secondary Sources

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 818–820, 823–826

Chin et al., California Practice Guide: Employment Litigation, [Ch. 5\(I\)-H](#), ~~Ch. 5-G~~, *Negligent Misrepresentation*, ¶ 5:[594-781](#) et seq. (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 11-D, *Negligent Misrepresentation*, ¶ 11:41 et seq. (The Rutter Group)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.10 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 269, *Fraud and Deceit*, § 269.14 (Matthew Bender)

10 California Points and Authorities, Ch. 105, *Fraud and Deceit*, § 105.270 et seq. (Matthew Bender)

2 California Civil Practice: Torts, §§ 22:13–22:15 (Thomson Reuters)

**2002. Trespass to Timber—Essential Factual Elements (Civ. Code, § 3346)**

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**[Name of plaintiff] claims that [name of defendant] trespassed on [his/her/its] property and [cut down or damaged trees/took timber]. To establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of plaintiff] [owned/leased/occupied/controlled] the property;**
- 2. That [name of defendant] intentionally entered [name of plaintiff]’s property and [cut down or damaged trees/took timber] located on the property;**

**[or]**

**That [name of defendant], although not intending to do so, [recklessly/ [or] negligently] entered [name of plaintiff]’s property and damaged trees located on the property;**

- 3. That [name of plaintiff] did not give permission to [cut down or damage the trees/take timber] [or that [name of defendant] exceeded [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.**

**[In considering whether [name of plaintiff] was harmed, you may take into account the lost aesthetics and functionality of an injured tree.]**

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*New September 2003; Revised June 2013*

**Directions for Use**

Give this instruction for loss of timber or damages to trees. Note that actual damages are to be doubled regardless of the defendant’s intent. (See Civ. Code, § 3346(a).) If treble damages for willful and malicious conduct are sought, also give CACI No. 2003, *Damage to Timber—Willful and Malicious Conduct*.

With regard to element 2, liability for trespass may be imposed for conduct that is intentional, reckless, negligent, or the result of an extra-hazardous activity. (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406 [235 Cal.Rptr. 165].) However, intent to trespass means only that the person intended to be in the particular place where the trespass is alleged to have occurred. (*Miller v. National Broadcasting Corp.* (1986) 187 Cal.App.3d 1463, 1480-1481 [232 Cal.Rptr. 668].) Liability may be also based on the defendant’s unintentional, but negligent or reckless, act; for example an automobile accident that damages a tree. An intent to damage is not necessary. (*Meyer v. Pacific Employers Insurance Co.* (1965)

233 Cal.App.2d 321 [43 Cal.Rptr. 542].)

It is no defense that the defendant mistakenly, but in good faith, believed that he or she had a right to be in that location. (*Cassinovs v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1780 [18 Cal.Rptr.2d 574].) In such a case, the word “intentionally” in element 2 might be confusing to the jury. To alleviate this possible confusion, give the third option to CACI No. 2004, “*Intentional Entry*” Explained. See also the Sources and Authority to CACI No. 2000, *Trespass—Essential Factual Elements*.

Include the last paragraph if the plaintiff claims harm based on lost aesthetics and functionality.

### Sources and Authority

- Damages for Injury to Timber. Civil Code section 3346(a).
- ~~“[T]he effect of [Civil Code] section 3346 as amended, read together with [Code of Civil Procedure] section 733, is that the Legislature intended, insofar as wilful and malicious trespass is concerned under either section, to leave the imposition of treble damages discretionary with the court, but to place a floor upon that discretion at double damages which must be applied whether the trespass be wilful and malicious or casual and involuntary, etc. There are now three measures of damages applicable to the pertinent types of trespass: (1) for wilful and malicious trespass the court may impose treble damages but must impose double damages; (2) for casual and involuntary trespass, etc., the court must impose double damages; and (3) for trespass under authority actual damages.” (*Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 645, fn.3 [199 Cal.Rptr.3d 705] Although an award of double the actual damages is mandatory under section 3346, the court retains discretion whether to triple them under that statute or Code of Civil Procedure section 733. [¶] ‘So, the effect of section 3346 as amended, read together with section 733, is that the Legislature intended, insofar as wilful and malicious trespass is concerned under either section, to leave the imposition of treble damages discretionary with the court, but to place a floor upon that discretion at double damages which must be applied whether the trespass be wilful and malicious or casual and involuntary, etc. There are now three measures of damages applicable to the pertinent types of trespass: (1) for wilful and malicious trespass the court may impose treble damages but must impose double damages; (2) for casual and involuntary trespass, etc., the court must impose double damages; and (3) for trespass under authority actual damages.’ ” (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1742 [33 Cal.Rptr.2d 391], internal citation omitted.)~~
- The damages provisions in sections 3346 and 733 must be “treated as penal and punitive.” (*Baker v. Ramirez* (1987) 190 Cal.App.3d 1123, 1138 [235 Cal.Rptr. 857], internal citation omitted.)
- “ ‘However, due to the penal nature of these provisions, the damages should be neither doubled nor tripled under section 3346 if punitive damages are awarded under section 3294. That would amount to punishing the defendant twice and is not necessary to further the policy behind section 3294 of educating blunderers (persons who mistake location of boundary lines) and discouraging rogues (persons who ignore boundary lines).’ ” (*Hassoldt v. Patrick Media Group, Inc.* (2000) 84 Cal.App.4th 153, 169 [100 Cal.Rptr.2d 662], internal citations omitted.)
- “Diminution in market value ... is not an absolute limitation; several other theories are available to fix

appropriate compensation for the plaintiff's loss. ... [¶] One alternative measure of damages is the cost of restoring the property to its condition prior to the injury. Courts will normally not award costs of restoration if they exceed the diminution in the value of the property; the plaintiff may be awarded the lesser of the two amounts." (*Heninger v. Dunn* (1980) 101 Cal.App.3d 858, 862 [162 Cal.Rptr. 104], internal citations omitted.)

- “The rule precluding recovery of restoration costs in excess of diminution in value is, however, not of invariable application. Restoration costs may be awarded even though they exceed the decrease in market value if ‘there is a reason personal to the owner for restoring the original condition,’ or ‘where there is reason to believe that the plaintiff will, if fact, make the repairs.’” (*Heninger, supra*, 101 Cal.App.3d at p. 863, internal citations omitted.)
- “Courts have stressed that only reasonable costs of replacing destroyed trees with identical or substantially similar trees may be recovered.” (*Heninger, supra*, 101 Cal.App.3d at p. 865.)
- “As a tree growing on a property line, the Aleppo pine tree was a ‘line tree.’ Civil Code section 834 provides: ‘Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.’ As such, neither owner ‘is at liberty to cut the tree without the consent of the other, nor to cut away the part which extends into his land, if he thereby injures the common property in the tree.’” (*Kallis v. Sones* (2012) 208 Cal.App.4th 1274, 1278 [146 Cal.Rptr.3d 419].)
- “[W]hen considering the diminished value of an injured tree, the finder of fact may account for lost aesthetics and functionality.” (*Rony v. Costa* (2012) 210 Cal.App.4th 746, 755 [148 Cal.Rptr.3d 642].)
- “Although [plaintiff] never quantified the loss of aesthetics at \$15,000, she need not have done so. As with other hard-to-quantify injuries, such as emotional and reputational ones, the trier of fact court was free to place any dollar amount on aesthetic harm, unless the amount was ‘so grossly excessive as to shock the moral sense, and raise a reasonable presumption that the [trier of fact] was under the influence of passion or prejudice.’” (*Rony, supra*, 210 Cal.App.4th at p. 756.)
- “[P]laintiffs here showed (i) the tree's unusual size and form made it very unusual for a ‘line tree’—it functioned more like two trees growing on the separate properties; (ii) the tree's attributes, such as its broad canopy, provided significant benefits to the [plaintiffs’] property; and (iii) the [plaintiffs] placed great personal value on the tree. The trial court correctly recognized that it could account for these factors when determining damages, including whether or not damages should be reduced.” (*Kallis, supra*, 208 Cal.App.4th at p. 1279.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1732–1734

2 Levy et al., California Torts, Ch. 17, *Nuisance and Trespass*, § 17.20 (Matthew Bender)

48 California Forms of Pleading and Practice, Ch. 550, *Trespass*, § 550.10 (Matthew Bender)

22 California Points and Authorities, Ch. 225, *Trespass*, § 225.161 et seq. (Matthew Bender)

### 2003. Damage to Timber—Willful and Malicious Conduct

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**[Name of plaintiff] also claims that [name of defendant]’s conduct in cutting down, damaging, or harvesting [name of plaintiff]’s trees was willful and malicious.**

**“Willful” simply means that [name of defendant]’s conduct was intentional.**

**“Malicious” means that [name of defendant] acted with intent to vex, annoy, harass, or injure, or that [name of defendant]’s conduct was done with a knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.**

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*New September 2003; Revised December 2010*

#### Directions for Use

Read this instruction if the plaintiff is seeking double or treble damages because the defendant’s conduct was willful and malicious. (See Civ. Code, § 3346; Code Civ. Proc., § 733; *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1742 [33 Cal.Rptr.2d 391].) The judge should ensure that this finding is noted on the special verdict form. The jury should find the actual damages suffered. If the jury finds willful and malicious conduct, the court must award double damages and may award treble damages. (See *Ostling, supra*, 27 Cal.App.4th at p. 1742.)

#### Sources and Authority

- Damages for Injury to Timber. Civil Code section 3346(a).
- Treble Damages for Injury to Timber. Code of Civil Procedure section 733.
- “[T]he effect of [Civil Code] section 3346 as amended, read together with [Code of Civil Procedure] section 733, is that the Legislature intended, insofar as wilful and malicious trespass is concerned under either section, to leave the imposition of treble damages discretionary with the court, but to place a floor upon that discretion at double damages which must be applied whether the trespass be wilful and malicious or casual and involuntary, etc. There are now three measures of damages applicable to the pertinent types of trespass: (1) for wilful and malicious trespass the court may impose treble damages but must impose double damages; (2) for casual and involuntary trespass, etc., the court must impose double damages; and (3) for trespass under authority actual damages.” (*Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 645, fn. 3 [199 Cal.Rptr.3d 705].)
- The damages provisions in sections 3346 and 733 must be “treated as penal and punitive.” (*Baker v. Ramirez* (1987) 190 Cal.App.3d 1123, 1138 [235 Cal.Rptr. 857], internal citation omitted.)
- “ ‘However, due to the penal nature of these provisions, the damages should be neither doubled nor tripled under section 3346 if punitive damages are awarded under section 3294. That would amount

to punishing the defendant twice and is not necessary to further the policy behind section 3294 of educating blunderers (persons who mistake location of boundary lines) and discouraging rogues (persons who ignore boundary lines).’ ” (*Hassoldt v. Patrick Media Group, Inc.* (2000) 84 Cal.App.4th 153, 169 [100 Cal.Rptr.2d 662], internal citations omitted.)

- ~~“Although an award of double the actual damages is mandatory under section 3346, the court retains discretion whether to triple them under that statute or Code of Civil Procedure section 733. [¶] ‘So, the effect of section 3346 as amended, read together with section 733, is that the Legislature intended, insofar as wilful and malicious trespass is concerned under either section, to leave the imposition of treble damages discretionary with the court, but to place a floor upon that discretion at double damages which must be applied whether the trespass be wilful and malicious or casual and involuntary, etc. There are now three measures of damages applicable to the pertinent types of trespass: (1) for wilful and malicious trespass the court may impose treble damages but must impose double damages; (2) for casual and involuntary trespass, etc., the court must impose double damages; and (3) for trespass under authority actual damages.’ ” (*Ostling, supra*, 27 Cal.App.4th at p. 1742, internal citation omitted.)~~
- ~~“ ‘ “[T]reble damages may only be awarded when the wrongdoer intentionally acted wilfully or maliciously. The intent required is the intent to vex, harass, or annoy or injure the plaintiff. It is a question of fact for the trial court whether or not such intent exists.’ [Civil Code section 3346 and Code of Civil Procedure section 733] are permissive and not mandatory and while they ‘prescribe the degree of penalty to be invoked they commit to the sound discretion of the trial court the facts and circumstances under which it shall be invoked.’ ” ” (*Salazar, supra*, 245 Cal.App.4th at p. 646) Treble damages could only be awarded under [section 3346] where the wrongdoer intentionally acted wilfully or maliciously. The required intent is one to vex, harass or annoy, and the existence of such intent is a question of fact for the trial court.” (*Sills v. Siller* (1963) 218 Cal.App.2d 735, 743 [32 Cal.Rptr. 621], internal citation omitted.)~~
- “Although neither section [3346 or 733] expressly so provides, it is now settled that to warrant such an award of treble damages it must be established that the wrongful act was willful and malicious.” (*Caldwell v. Walker* (1963) 211 Cal.App.2d 758, 762 [27 Cal.Rptr. 675], internal citations omitted.)
- “A proper and helpful analogue here is the award of exemplary damages under section 3294 of the Civil Code when a defendant has been guilty, inter alia, of ‘malice, express or implied.’ ... ‘In order to warrant the allowance of such damages the act complained of must not only be wilful, in the sense of intentional, but it must be accompanied by some aggravating circumstance, amounting to malice. Malice implies an act conceived in a spirit of mischief or with criminal indifference towards the obligations owed to others. There must be an intent to vex, annoy or injure. Mere spite or ill will is not sufficient.’ ... Malice may consist of a state of mind determined to perform an act with reckless or wanton disregard of or indifference to the rights of others. Since a defendant rarely admits to such a state of mind, it must frequently be established from the circumstances surrounding his allegedly malicious acts.” (*Caldwell, supra*, 211 Cal.App.2d at pp. 763-764, internal citations omitted.)
- “Under [Health and Safety Code] section 13007, a tortfeasor generally is liable to the owner of property for damage caused by a negligently set fire. ‘[T]he statute places no restrictions on the type of property damage that is compensable.’ Such damages might include, for example, damage to



structures, to movable personal property, to soil, or to undergrowth; damages may even include such elements as the lost profits of a business damaged by fire. If the fire also damages trees—that is, causes ‘injuries to ... trees ... upon the land of another’—then the actual damages recoverable under section 13007 may be doubled (for negligently caused fires) or trebled (for fires intended to spread to the plaintiff’s property) pursuant to section 3346.” (*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 461 [102 Cal.Rptr.3d 32], internal citations omitted; but see *Gould v. Madonna* (1970) 5 Cal.App.3d 404, 407–408 [85 Cal.Rptr. 457] [Civ. Code, § 3346 does not apply to fires negligently set; Health & Saf. Code, § 13007 provides sole remedy].)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 1733

4 Levy et al., California Torts, Ch. 52, *Recovery for Medical Expenses and Economic Loss*, § 52.34 (Matthew Bender)

31 California Forms of Pleading and Practice, Ch. 350, *Logs and Timber*, § 350.12 (Matthew Bender)

22 California Points and Authorities, Ch. 225, *Trespass*, § 225.161 et seq. (Matthew Bender)

## 2200. Inducing Breach of Contract

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[Name of plaintiff] claims that [name of defendant] intentionally caused [name of third party] to breach [his/her/its] contract with [name of plaintiff]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That there was a contract between [name of plaintiff] and [name of third party];
  2. That [name of defendant] knew of the contract;
  3. That [name of defendant] intended to cause [name of third party] to breach the contract;
  4. That [name of defendant]'s conduct caused [name of third party] to breach the contract;
  5. That [name of plaintiff] was harmed; and
  6. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.
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New September 2003

### Directions for Use

If the validity of a contract is an issue, see the series of contracts instructions (CACI No. 300 et seq.).

### Sources and Authority

- “[C]ases have pointed out that while the tort of inducing breach of contract requires proof of a breach, the cause of action for interference with contractual relations is distinct and requires only proof of interference.” (Pacific Gas & Electric Co. v. Bear Stearns & Co. (1990) 50 Cal.3d 1118, 1129 [270 Cal.Rptr. 1, 791 P.2d 587]) (Pacific Gas & Electric Co., supra, 50 Cal.3d at p. 1129, internal citations omitted.)
- “The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” (Pacific Gas & Electric Co., supra, v. Bear Stearns & Co. (1990) 50 Cal.3d at p. 1118, 1126 [270 Cal.Rptr. 1, 791 P.2d 587], internal citations omitted.)
- ~~“[C]ases have pointed out that while the tort of inducing breach of contract requires proof of a breach, the cause of action for interference with contractual relations is distinct and requires only proof of interference.” (Pacific Gas & Electric Co., supra, 50 Cal.3d at p. 1129, internal citations omitted.)~~

- “[A] cause of action for intentional interference with contract requires an underlying enforceable contract. Where there is no existing, enforceable contract, only a claim for interference with prospective advantage may be pleaded.” (*PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal.App.4th 579, 601 [52 Cal.Rptr.2d 877].)
- “The act of inducing the breach must be an intentional one. If the actor had no knowledge of the existence of the contract or his actions were not intended to induce a breach, he cannot be held liable though an actual breach results from his lawful and proper acts.” (*Imperial Ice Co. v. Rossier* (1941) 18 Cal.2d 33, 37 [112 P.2d 631], internal citations omitted.)

“It is not enough that the actor intended to perform the acts which caused the result—he or she must have intended to cause the result itself.” (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 261 [45 Cal.Rptr.2d 90].)

- “The question is whether a plaintiff must plead and prove that the defendant engaged in wrongful acts with the specific intent of interfering with the plaintiff’s business expectancy. We conclude that specific intent is not a required element of the tort of interference with prospective economic advantage. While a plaintiff may satisfy the intent requirement by pleading specific intent, i.e., that the defendant desired to interfere with the plaintiff’s prospective economic advantage, a plaintiff may alternately plead that the defendant knew that the interference was certain or substantially certain to occur as a result of its action.” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1154 [131 Cal.Rptr.2d 29, 63 P.3d 937], original italics.)
- “The actionable wrong lies in the inducement to break the contract or to sever the relationship, not in the kind of contract or relationship so disrupted, whether it is written or oral, enforceable or not enforceable.” (*Pacific Gas & Electric Co., supra*, 50 Cal.3d at p. 1127.)
- “‘[I]t may be actionable to induce a party to a contract to terminate the contract according to its terms.’ ... ‘[I]t is the contractual relationship, not any term of the contract, which is protected against outside interference.’ ” (*I-CA Enterprises, Inc. v. Palram Americas, Inc.* (2015) 235 Cal.App.4th 257, 289 [185 Cal.Rptr.3d 24], internal citation omitted.)
- “[T]he tort cause of action for interference with a contract does not lie against a party to the contract. [Citations.] [¶] ... The tort duty not to interfere with the contract falls only on strangers-interlopers who have no legitimate interest in the scope or course of the contract’s performance.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514 [28 Cal.Rptr.2d 475, 869 P.2d 454], internal citations omitted.)
- “[I]nterference with an at-will contract is actionable interference with the contractual relationship, on the theory that a contract ‘at the will of the parties, respectively, does not make it one at the will of others. [Citations]’ ” (*Pacific Gas & Electric Co., supra*, 50 Cal.3d at p. 1127, internal citations and quotations omitted.)
- “Because interference with an existing contract receives greater solicitude than does interference with prospective economic advantage, it is not necessary that the defendant’s conduct be wrongful apart

from the interference with the contract itself.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55 [77 Cal.Rptr.2d 709, 960 P.2d 513], internal citations omitted.)

- “[A] person is not justified in inducing a breach of contract simply because he is in competition with one of the parties to the contract and seeks to further his own economic advantage at the expense of the other. [Citations.]’ This is because, ‘[w]hatever interest society has in encouraging free and open competition by means not in themselves unlawful, contractual stability is generally accepted as of greater importance than competitive freedom.’ A party may not, ‘under the guise of competition actively and affirmatively induce the breach of a competitor’s contract.’ ” (*I-CA Enterprises, Inc.*, *supra*, 235 Cal.App.4th at p. 290, internal citations omitted.)
- “We conclude that a plaintiff seeking to state a claim for intentional interference with contract or prospective economic advantage because defendant induced another to undertake litigation, must allege that the litigation was brought without probable cause and that the litigation concluded in plaintiff’s favor.” (*Pacific Gas & Electric Co.*, *supra*, 50 Cal.3d at p. 1137.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 730–740

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, §§ 40.110-40.117 (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition*, § 565.132 et seq (Matthew Bender)

12 California Points and Authorities, Ch. 122, *Interference*, § 122.20 et seq. (Matthew Bender)

## 2306. Covered and Excluded Risks—Predominant Cause of Loss

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**You have heard evidence that the claimed loss was caused by a combination of covered and excluded risks under the insurance policy. When a loss is caused by a combination of covered and excluded risks under the policy, the loss is covered only if the most important or predominant cause is a covered risk.**

**[[Name of defendant] claims that [name of plaintiff]’s loss is not covered because the loss was caused by a risk excluded under the policy. To succeed, [name of defendant] must prove that the most important or predominant cause of the loss was [describe excluded peril or event], which is a risk excluded under the policy.]**

*[or]*

**[[Name of plaintiff] claims that the loss was caused by a risk covered under the policy. To succeed, [name of plaintiff] must prove that the most important or predominant cause of the loss was [describe covered peril or event], which is a risk covered under the policy.]**

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*New September 2003*

### Directions for Use

The instructions in this series assume the plaintiff is the insured and the defendant is the insurer. The party designations may be changed if appropriate to the facts of the case.

This instruction is intended for use in first party property insurance cases where there is evidence that a loss was caused by both covered and excluded perils. In most cases the court will determine as a question of law what perils are covered and excluded under the policy.

Depending on the type of insurance at issue, the court must select the bracketed paragraph that presents the correct burden of proof. For all-risk homeowner’s policies, for example, once the insured establishes basic coverage, the insurer bears the burden of proving the loss was caused by an excluded peril. In contrast, for “named perils” policies (for example, fire insurance) the insured bears the burden of proving the loss was caused by the specified peril. (See *Strubble v. United Services Automobile Assn.* (1973) 35 Cal.App.3d 498, 504 [110 Cal.Rptr. 828].)

### Sources and Authority

- Remote Cause of Loss. Insurance Code section 530.
- Excluded Peril: But-For Causation. Insurance Code section 532.
- “[In] determining whether a loss is within an exception in a policy, where there is a concurrence of different causes, the efficient cause—the one that sets others in motion—is the cause to which the loss is

to be attributed, though the other causes may follow it, and operate more immediately in producing the disaster.” (*Sabella v. Wisler* (1963) 59 Cal.2d 21, 31–32 [27 Cal.Rptr. 689, 377 P.2d 889], internal quotation marks and citation omitted.)

- “*Sabella* defined ‘efficient proximate cause’ alternatively as the ‘one that sets others in motion,’ and as ‘the predominating or moving efficient cause.’ We use the term ‘efficient proximate cause’ (meaning predominating cause) when referring to the *Sabella* analysis because we believe the phrase ‘moving cause’ can be misconstrued to deny coverage erroneously, particularly when it is understood literally to mean the ‘triggering’ cause.” (*Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 403 [257 Cal.Rptr. 292, 770 P.2d 704], internal citations omitted.)
- “The efficient proximate cause referred to in *Sabella* has also been called the predominant cause or the most important cause of the loss. ‘By focusing the causal inquiry on the most important cause of a loss, the efficient proximate cause doctrine creates a “workable rule of coverage that provides a fair result within the reasonable expectations of both the insured and the insurer.” ’ ” (*Vardanyan v. AMCO Ins. Co.* (2015) 243 Cal.App.4th 779, 787 [197 Cal.Rptr.3d 195], internal citation omitted.)
- “[T]he ‘cause’ of loss in the context of a property insurance contract is totally different from that in a liability policy. This distinction is critical to the resolution of losses involving multiple causes. Frequently property losses occur which involve more than one peril that might be considered legally significant. ... ‘The task becomes one of identifying the most important cause of the loss and attributing the loss to that cause.’ ¶ On the other hand, the right to coverage in the third party liability insurance context draws on traditional tort concepts of fault, proximate cause and duty.” (*Garvey, supra*, 48 Cal.3d at pp. 406–407, internal quotation marks, italics, and citations omitted.)
- “[I]n an action upon an all-risks policy ~~such as the one before us~~ (unlike a specific peril policy), the insured does not have to prove that the peril proximately causing his loss was covered by the policy. This is because the policy covers *all* risks save for those risks specifically excluded by the policy. The insurer, though, since it is denying liability upon the policy, must prove the policy’s noncoverage of the insured’s loss—that is, that the insured’s loss was proximately caused by a peril specifically excluded from the coverage of the policy.” (*Strubble, supra*, 35 Cal.App.3d at p. 504; *Vardanyan, supra*, 243 Cal.App.4th at pp. 796–797.)
- “A policy cannot extend coverage for a specified peril, then exclude coverage for a loss caused by a combination of the covered peril and an excluded peril, without regard to whether the covered peril was the predominant or efficient proximate cause of the loss. Other Coverage 9 identifies the perils that are covered when the loss involves collapse. If any other peril contributes to the loss, whether the loss is covered or excluded depends upon which peril is the predominant cause of the loss. To the extent the term ‘caused only by one or more’ of the listed perils can be construed to mean the contribution of any unlisted peril, in any way and to any degree, would result in the loss being excluded from coverage, the provision is an unenforceable attempt to contract around the efficient proximate cause doctrine. ¶ Accordingly, CACI No. 2306 ... was the correct instruction to give to the jury.” (*Vardanyan, supra*, 243 Cal.App.4th at p. 796.)
- “[T]he scope of coverage under an all-risk homeowner’s policy includes all risks except those specifically excluded by the policy. When a loss is caused by a combination of a covered and

specifically excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss. ... [T]he question of what caused the loss is generally a question of fact, and the loss is not covered if the covered risk was only a remote cause of the loss, or the excluded risk was the efficient proximate, or predominate, cause.” (*State Farm Fire & Casualty Co. v. Von Der Lieth* (1991) 54 Cal.3d 1123, 1131–1132 [2 Cal.Rptr.2d 183, 820 P.2d 285], internal citation omitted.)

- “[A]n insurer is not absolutely prohibited from drafting and enforcing policy provisions that provide or leave intact coverage for some, but not all, manifestations of a particular peril. This is, in fact, an everyday practice that normally raises no questions regarding section 530 or the efficient proximate cause doctrine.” (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 759 [27 Cal.Rptr.3d 648, 110 P.3d 903].)

### ***Secondary Sources***

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 6-E, First Party Coverages—Causation Principles, ~~(The Rutter Group)~~ ¶¶ 6:134-6:143, 6:253 (The Rutter Group)

1 California Liability Insurance Practice: Claims & Litigation (Cont.Ed.Bar) Analyzing Coverage: Reading and Interpreting Insurance Policies, § 3.42

3 California Insurance Law & Practice, Ch. 9, *Homeowners and Related Policies*, § 36.42 (Matthew Bender)

26 California Forms of Pleading and Practice, Ch. 308, *Insurance*, § 308.113 (Matthew Bender)

12 California Points and Authorities, Ch. 120, *Insurance*, § 120.50 (Matthew Bender)

**2430. Wrongful Discharge in Violation of Public Policy—Essential Factual Elements**

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[Name of plaintiff] claims [he/she] was discharged from employment for reasons that violate a public policy. It is a violation of public policy [specify claim in case, e.g., to discharge someone from employment for refusing to engage in price fixing]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of plaintiff] was employed by [name of defendant];
  2. That [name of defendant] discharged [name of plaintiff];
  3. That [insert alleged violation of public policy, e.g., “[name of plaintiff]’s refusal to engage in price fixing”] was a substantial motivating reason for [name of plaintiff]’s discharge; and
  4. That the discharge caused [name of plaintiff] harm.
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*New September 2003; Revised June 2013, June 2014, December 2014*

**Directions for Use**

The judge should determine whether the purported reason for firing the plaintiff would amount to a violation of public policy. (See *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1092 [4 Cal.Rptr.2d 874, 824 P.2d 680]; overruled on other grounds in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80 fn. 6 [78 Cal. Rptr.2d 16, 960 P.2d 1046].) The jury should then be instructed that the alleged conduct would constitute a public-policy violation if proved.

Note that this instruction uses the term “substantial motivating reason” to express causation between the public policy and the discharge (see element 3). “Substantial motivating reason” has been held to be the appropriate standard for cases alleging termination in violation of public policy. (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758]; see *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “Substantial Motivating Reason” Explained.)

This instruction must be supplemented with CACI No. 2433, *Wrongful Discharge in Violation of Public Policy—Damages*. If plaintiff alleges he or she was forced or coerced to resign, then CACI No. 2431, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy*, or CACI No. 2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions That Violate Public Policy*, should be given instead. See also CACI No. 2510, “Constructive Discharge” Explained.

This instruction may be modified for adverse employment actions other than discharge, for example demotion, if done in violation of public policy. (See *Garcia v. Rockwell Internat. Corp.* (1986) 187 Cal.App.3d 1556, 1561 [232 Cal.Rptr. 490], disapproved on other grounds in *Gantt v. Sentry Ins.* (1992)



1 Cal.4th 1083, 1093 [4 Cal.Rptr.2d 874, 824 P.2d 680] [public policy forbids retaliatory action taken by employer against employee who discloses information regarding employer's violation of law to government agency].) See also CACI No. 2509, “*Adverse Employment Action*” Explained.

### Sources and Authority

- “ ‘[W]hile an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy. Any other conclusion would sanction lawlessness, which courts by their very nature are bound to oppose.’ ” (*Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1138–1139 [69 Cal.Rptr.3d 445], internal citations omitted.)
- “[W]hen an employer’s discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions.” (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)
- “The elements of a claim for wrongful discharge in violation of public policy are (1) an employer-employee relationship, (2) the employer terminated the plaintiff’s employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm.” (*Yau v. Allen* (2014) 229 Cal.App.4th 144, 154 [176 Cal.Rptr.3d 824].)
- “[T]his court established a set of requirements that a policy must satisfy to support a tortious discharge claim. First, the policy must be supported by either constitutional or statutory provisions. Second, the policy must be ‘public’ in the sense that it ‘inures to the benefit of the public’ rather than serving merely the interests of the individual. Third, the policy must have been articulated at the time of the discharge. Fourth, the policy must be ‘fundamental’ and ‘substantial.’ ” (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890 [66 Cal.Rptr.2d 888, 941 P.2d 1157], footnote omitted.)
- “Policies are not ‘public’ (and thus do not give rise to a common law tort claim) when they are derived from statutes that ‘simply regulate conduct between private individuals, or impose requirements whose fulfillment does not implicate fundamental public policy concerns.’ ” (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 926 [180 Cal.Rptr.3d 359].)
- “[T]he cases in which violations of public policy are found generally fall into four categories: (1) refusing to violate a statute; (2) performing a statutory obligation (3) exercising a statutory right or privilege; and (4) reporting an alleged violation of a statute of public importance.” (*Gantt, supra*, 1 Cal.4th at pp. 1090-1091, internal citations and footnote omitted, overruled on other grounds in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6 [78 Cal.Rptr.2d 16, 960 P.2d 1046]; accord *Stevenson, supra*, 16 Cal.4th at p. 889.)
- “[T]ermination of an employee most clearly violates public policy when it contravenes the provision of a statute forbidding termination for a specified reason . . . .” (*Diego, supra*, 231 Cal.App.4th at p. 926)
- “[Discharge because of employee’s] [r]efusal to violate a governmental regulation may also be the

basis for a tort cause of action where the administrative regulation enunciates a fundamental public policy and is authorized by statute.” (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 708–709 [96 Cal.Rptr.3d 159].)

- “In the context of a tort claim for wrongful discharge, tethering public policy to specific constitutional or statutory provisions serves not only to avoid judicial interference with the legislative domain, but also to ensure that employers have adequate notice of the conduct that will subject them to tort liability to the employees they discharge ... .” (*Stevenson, supra*, 16 Cal.4th at p. 889.)
- “[A]n employee need not prove an actual violation of law; it suffices if the employer fired him for reporting his ‘reasonably based suspicions’ of illegal activity.” (*Green, supra*, 19 Cal.4th at p. 87, internal citation omitted.)
- “[A]n employer’s authority over its employee does not include the right to demand that the employee commit a criminal act to further its interests, and an employer may not coerce compliance with such unlawful directions by discharging an employee who refuses to follow such an order ... .” (*Tameny, supra*, 27 Cal.3d at p. 178.)
- “[T]here is a ‘fundamental public interest in a workplace free from illegal practices ... .’ ‘[T]he public interest is in a lawful, not criminal, business operation. Attainment of this objective requires that an employee be free to call his or her employer’s attention to illegal practices, so that the employer may prevent crimes from being committed by misuse of its products by its employees.’ ” (*Yau, supra*, 229 Cal.App.4th at p. 157.)
- “An action for wrongful termination in violation of public policy ‘can only be asserted against *an employer*. An individual who is not an employer cannot commit the tort of wrongful discharge in violation of public policy; rather, he or she can only be the agent by which *an employer* commits that tort.’ ” (*Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1351 [172 Cal.Rptr.3d 686], original italics.)
- Employees in both the private and public sector may assert this claim. (*See Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407 [4 Cal.Rptr.2d 203].)
- “Sex discrimination in employment may support a claim of tortious discharge in violation of public policy.” (*Kelley v. The Conco Cos.* (2011) 196 Cal.App.4th 191, 214 [126 Cal.Rptr.3d 651].)
- “In sum, a wrongful termination against public policy common law tort based on sexual harassment can be brought against an employer of any size.” (*Kim, supra*, 226 Cal.App.4th at p. 1351.)
- “To establish a claim for wrongful termination in violation of public policy, an employee must prove causation. (See CACI No. 2430 [using phrase ‘substantial motivating reason’ to express causation].) Claims of whistleblower harassment and retaliatory termination may not succeed where a plaintiff ‘cannot demonstrate the required nexus between his reporting of alleged statutory violations and his allegedly adverse treatment by [the employer].’ ” (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1357 [181 Cal.Rptr.3d 68].)

- “It would be nonsensical to provide a different standard of causation in FEHA cases and common law tort cases based on public policies encompassed by FEHA.” (*Mendoza v. Western Medical Center Santa Ana* (2014) 222 Cal.App.4th 1334, 1341 [166 Cal.Rptr.3d 720].)
- “If claims for wrongful termination in violation of public policy must track FEHA, it necessarily follows that jury instructions pertinent to causation and motivation must be the same for both. Accordingly, we conclude the trial court did not err in giving the instructions set forth in the CACI model jury instructions.” (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1323 [200 Cal.Rptr.3d 315].)
- “FEHA's policy prohibiting disability discrimination in employment is sufficiently substantial and fundamental to support a claim for wrongful termination in violation of public policy.” (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal. App. 4th 635, 660 [163 Cal.Rptr.3d 392].)
- “Although the fourth cause of action references FEHA as one source of the public policy at issue, this is not a statutory FEHA cause of action. FEHA does not displace or supplant common law tort claims for wrongful discharge.” (*Kim, supra*, 226 Cal.App.4th at p. 1349.)
- “[T]o the extent the trial court concluded Labor Code section 132a is the exclusive remedy for work-related injury discrimination, it erred. The California Supreme Court held ‘[Labor Code] section 132a does not provide an exclusive remedy and does not preclude an employee from pursuing FEHA and common law wrongful discharge remedies.’ ” (*Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1381 [196 Cal.Rptr.3d 68].)
- “California's minimum wage law represents a fundamental policy for purposes of a claim for wrongful termination or constructive discharge in violation of public policy.” (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 831–832 [166 Cal.Rptr.3d 242].)
- “ ‘Labor Code section 1102.5, subdivision (b), which prohibits employer retaliation against an employee who reports a reasonably suspected violation of the law to a government or law enforcement agency, reflects the broad public policy interest in encouraging workplace “whistleblowers,” who may without fear of retaliation report concerns regarding an employer's illegal conduct. This public policy is the modern day equivalent of the long-established duty of the citizenry to bring to public attention the doings of a lawbreaker. [Citation.] ... ’ ” (*Ferrick, supra*, 231 Cal.App.4th at p. 1355.)
- “That [defendant]’s decision not to renew her contract for an additional season *might* have been influenced by her complaints about an unsafe working condition ... does not change our conclusion in light of the principle that a decision not to renew a contract set to expire is not actionable in tort.” (*Touchstone Television Productions v. Superior Court* (2012) 208 Cal.App.4th 676, 682 [145 Cal.Rptr.3d 766], original italics.)
- “ ‘ “[P]ublic policy’ as a concept is notoriously resistant to precise definition, and ... courts should venture into this area, if at all, with great care ... . ” [Citation.] Therefore, *when the constitutional provision or statute articulating a public policy also includes certain substantive limitations in scope or remedy, these limitations also circumscribe the common law wrongful discharge cause of action.*

Stated another way, the common law cause of action cannot be broader than the constitutional provision or statute on which it depends, and therefore it ‘presents no impediment to employers that operate within the bounds of law.’ [Citation.]’ ” (*Dutra v. Mercy Medical Center Mt. Shasta* (2012) 209 Cal.App.4th 750, 756 [146 Cal.Rptr.3d 922], original italics.)

### ***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 222

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-A, *Wrongful Discharge In Violation Of Public Policy (Tameny Claims)*, ¶¶ 5:2, 5:47, 5:50, 5:70, 5:105, 5:115, 5:150, 5:151, 5:170, 5:195, 5:220, 5:235 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Public Policy Violations, § 5.45

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.04 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, §§ 249.12, 249.50–249.52 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, §§ 100.52–100.58 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 6:23–6:25 (Thomson Reuters)

## 2507. “Substantial Motivating Reason” Explained

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A “substantial motivating reason” is a reason that actually contributed to the [specify adverse employment action]. It must be more than a remote or trivial reason. It does not have to be the only reason motivating the [adverse employment action].

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New December 2007; Revised June 2013

### Directions for Use

Read this instruction with CACI No. 2500, *Disparate Treatment—Essential Factual Elements*, CACI No. 2505, *Retaliation—Essential Factual Elements*, CACI No. 2540, *Disability Discrimination—Disparate Treatment—Essential Factual Elements*, CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements*, or CACI No. 2570, *Age Discrimination—Disparate Treatment—Essential Factual Elements*.

### Sources and Authority

- Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Causation Under Federal Law. Title 42 United States Code section 2000e-2(m).
- “Substantial motivating factor” explained. Title 2 California Code of Regulations section 11009(c).
- “Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354 [100 Cal.Rptr.2d 352, 8 P.3d 1089].)
- “While a complainant need not prove that [discriminatory] animus was the sole motivation behind a challenged action, he must prove by a preponderance of the evidence that there was a ‘causal connection’ between the employee’s protected status and the adverse employment decision.” (*Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1319 [237 Cal.Rptr. 884].)
- “The employee need not show ‘he would have in any event been rejected or discharged solely on the basis of his race, without regard to the alleged deficiencies. ...’ In other words, ‘while a complainant need not prove that racial animus was the sole motivation behind the challenged action, he must prove by a preponderance of the evidence that there was a “causal connection” between the employee’s protected status and the adverse employment decision.’ ” (*Clark v. Claremont University Center* (1992) 6 Cal.App.4th 639, 665 [8 Cal.Rptr.2d 151], citing *McDonald v. Santa Fe Trail Transp. Co.* (1976) 427 U.S. 273, 282, fn. 10 [96 S.Ct. 2574, 49 L.Ed.2d 493, 502] and *Mixon, supra*, 192 Cal.App.3d at p. 1319.)
- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than

simply a motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, . . . proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49], original italics.)

- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a “but for” cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “Although [plaintiff] contends that a jury in an employment discrimination case would not draw any meaningful distinction between ‘a motivating reason’ and ‘a substantial motivating reason’ in deciding whether there was unlawful discrimination, the Supreme Court reached a contrary conclusion in *Harris [supra]*. The court specifically concluded that ‘[r]equiring the plaintiff to show that discrimination was a substantial motivating factor, rather than simply a motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision.’ ” (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758].)

### **Secondary Sources**

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:485–7:508 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.61–2.65, 2.87

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.11[1] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23[2] (Matthew Bender)

1-California Civil Practice: Employment Litigation-~~Discrimination in Employment~~, §§ 2:20–2:21, 2:75 (Thomson Reuters)

**2512. Limitation on Remedies—Same Decision**

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*[Name of plaintiff]* claims that *[he/she]* was *[discharged/[other adverse employment action]]* because of *[his/her]* *[protected status or action, e.g., race, gender, or age]*, which is an unlawful *[discriminatory/retaliatory]* reason. *[Name of defendant]* claims that *[name of plaintiff]* *[was discharged/[other adverse employment action]]* because of *[specify reason, e.g., plaintiff's poor job performance]*, which is a lawful reason.

**If you find that *[discrimination/retaliation]* was a substantial motivating reason for *[name of plaintiff]*'s *[discharge/[other adverse employment action]]*, you must then consider *[name of defendant]*'s stated reason for the *[discharge/[other adverse employment action]]*.**

**If you find that *[e.g., plaintiff's poor job performance]* was also a substantial motivating reason, then you must determine whether the defendant has proven that *[he/she/it]* would have *[discharged/[other adverse employment action]]* *[name of plaintiff]* anyway at that time based on *[e.g., plaintiff's poor job performance]* even if *[he/she/it]* had not also been substantially motivated by *[discrimination/retaliation]*.**

**In determining whether *[e.g., plaintiff's poor job performance]* was a substantial motivating reason, determine what actually motivated *[name of defendant]*, not what *[he/she/it]* might have been justified in doing.**

**If you find that *[name of defendant]* *[discharged/[other adverse employment action]]* *[name of plaintiff]* for a *[discriminatory/retaliatory]* reason, you will be asked to determine the amount of damages that *[he/she]* is entitled to recover. If, however, you find that *[name of defendant]* would have *[discharged/[other adverse employment action]]* *[name of plaintiff]* anyway at that time for *[specify defendant's nondiscriminatory/nonretaliatory reason]*, then *[name of plaintiff]* will not be entitled to reinstatement, back pay, or damages.**

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*New December 2013; Revised June 2015, June 2016*

**Directions for Use**

Give this instruction along with CACI No. 2507, “*Substantial Motivating Reason*” Explained, if the employee has presented sufficient evidence for the jury to find that the employer took adverse action against him or her for a prohibited reason, but the employer has presented sufficient evidence for the jury to find that it had a legitimate reason for the action. In such a “mixed-motive” case, the employer is relieved from an award of damages, but may still be liable for attorney fees and costs and injunctive relief. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 211 [152 Cal.Rptr.3d 392, 294 P.3d 49].)

Mixed-motive must be distinguished from pretext though both require evaluation of the same evidence, i.e., the employer’s purported legitimate reason for the adverse action. In a pretext case, the only actual motive is the discriminatory one and the purported legitimate reasons are fabricated in order to disguise

the true motive. (See *City and County of San Francisco v. Fair Employment and Housing Com.* (1987) 191 Cal.App.3d 976, 985 [236 Cal.Rptr. 716].) The employee has the burden of proving pretext. (*Harris, supra*, 56 Cal.4th at pp. 214–215.) If the employee proves discrimination or retaliation and also pretext, the employer is liable for all potential remedies including damages. But if the employee proves discrimination or retaliation but fails to prove pretext, then a mixed-motive case is presented. To avoid an award of damages, the employer then has the burden of proving that it would have made the same decision anyway solely for the legitimate reason, even though it may have also discriminated or retaliated.

### Sources and Authority

- “[U]nder the FEHA, when a jury finds that unlawful discrimination was a substantial factor motivating a termination of employment, and when the employer proves it would have made the same decision absent such discrimination, a court may not award damages, backpay, or an order of reinstatement. But the employer does not escape liability. In light of the FEHA’s express purpose of not only redressing but also preventing and deterring unlawful discrimination in the workplace, the plaintiff in this circumstance could still be awarded, where appropriate, declaratory relief or injunctive relief to stop discriminatory practices. In addition, the plaintiff may be eligible for reasonable attorney’s fees and costs.” (*Harris, supra*, 56 Cal.4th at p. 211.)
- “Because employment discrimination litigation does not resemble the kind of cases in which we have applied the clear and convincing standard, we hold that preponderance of the evidence is the standard of proof applicable to an employer’s same-decision showing” (*Harris, supra*, 53 Cal.4th at p. 239.)
- “[W]hen we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision *at the time it made its actual decision.*” (*Harris, supra*, 56 Cal.4th at p. 224, original italics.)
- “In light of today’s decision, a jury in a mixed-motive case alleging unlawful termination should be instructed that it must find the employer’s action was substantially motivated by discrimination before the burden shifts to the employer to make a same-decision showing, and that a same-decision showing precludes an award of reinstatement, backpay, or damages.” (*Harris, supra*, 56 Cal.4th at p. 241.)
- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a ‘but for’ cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “[A] plaintiff has the initial burden to make a prima facie case of discrimination by showing that it is more likely than not that the employer has taken an adverse employment action based on a prohibited criterion. A prima facie case establishes a presumption of discrimination. The employer may rebut the presumption by producing evidence that its action was taken for a legitimate, nondiscriminatory reason. If the employer discharges this burden, the presumption of



discrimination disappears. The plaintiff must then show that the employer's proffered nondiscriminatory reason was actually a pretext for discrimination, and the plaintiff may offer any other evidence of discriminatory motive. The ultimate burden of persuasion on the issue of discrimination remains with the plaintiff.” (*Harris, supra*, 56 Cal.4th at pp. 214–215.)

- “Following the California Supreme Court's decision in *Harris*, ... the Judicial Council added CACI No. 2512, to be given when the employer presents evidence of a legitimate reason for the adverse employment action, informing the jurors that even if they find that discrimination was a substantial motivating reason for the adverse action, if the employer establishes that the adverse action nonetheless would have been taken for legitimate reasons, ‘then [the plaintiff] will not be entitled to reinstatement, back pay, or damages.’ ” (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1320–1321 [200 Cal.Rptr.3d 315].)
- “ “[Plaintiff] further argues that for equitable reasons, an employer that wishes to make a same-decision showing must concede that it had mixed motives for taking the adverse employment action instead of denying a discriminatory motive altogether. But there is no inconsistency when an employer argues that its motive for discharging an employee was legitimate, while also arguing, contingently, that if the trier of fact finds a mixture of lawful and unlawful motives, then its lawful motive alone would have led to the discharge.’ ” (*Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 199 [167 Cal.Rptr.3d 24] [quoting *Harris, supra*, 56 Cal.App.4th at p. 240].)
- “As a preliminary matter, we reject [defendant]’s claim that the jury could have found no liability on the part of [defendant] had it been properly instructed on the mixed-motive defense at trial. As discussed, the Supreme Court in *Harris* held that the mixed-motive defense is available under the FEHA, but only as a limitation on remedies and not as a complete defense to liability. Consequently, when the plaintiff proves by a preponderance of the evidence that discrimination was a substantial motivating factor in the adverse employment decision, the employer is liable under the FEHA. When the employer proves by a preponderance of the evidence that it would have made the same decision even in the absence of such discrimination, the employer is still liable under the FEHA, but the plaintiff’s remedies are then limited to declaratory or injunctive relief, and where appropriate, attorney’s fees and costs. As presently drafted, BAJI No. 12.26 does not accurately set forth the parameters of the defense as articulated by the Supreme Court, but rather states that, in a mixed-motive case, ‘the employer is not liable if it can establish by a preponderance of the evidence that its legitimate reason, standing alone, would have induced it to make the same decision.’ By providing that the mixed-motive defense, if proven, is a complete defense to liability, [defendant]’s requested instruction directly conflicts with the holding in *Harris*. (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 481 [161 Cal.Rptr.3d 758], internal citations omitted.)
- “Pretext may ... be inferred from the timing of the company's termination decision, by the identity of the person making the decision, and by the terminated employee's job performance before termination.” (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 272 [100 Cal.Rptr.3d 296].)

### Secondary Sources

8 Witkin, *Summary of California Law* (10th ed. 2005) Constitutional Law, §§ 928, 950

7 Witkin, *California Procedure* (5th ed. 2008), Judgment § 217

3 Wilcox, *California Employment Law*, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.11 (Matthew Bender)

11 *California Forms of Pleading and Practice*, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23 (Matthew Bender)

## 2523. “Harassing Conduct” Explained

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Harassing conduct may include, but is not limited to, [any of the following:]

- [a. Verbal harassment, such as obscene language, demeaning comments, slurs, [or] threats [or] *[describe other form of verbal harassment]*]; [or]
  - [b. Physical harassment, such as unwanted touching, assault, or physical interference with normal work or movement;] [or]
  - [c. Visual harassment, such as offensive posters, objects, cartoons, or drawings;] [or]
  - [d. Unwanted sexual advances;] [or]
  - [e. *[Describe other form of harassment if appropriate, e.g., derogatory, unwanted, or offensive photographs, text messages, Internet postings].*]
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*New September 2003; Revised December 2007, December 2015*

### Directions for Use

Read this instruction with CACI No. 2521A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*; CACI No. 2521B, *Hostile Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*; CACI No. 2522A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*; or CACI No. 2522B, *Hostile Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*. Read also CACI No. 2524, “*Severe or Pervasive*” Explained, if appropriate.

### Sources and Authority

- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- “Harassment” Defined. Cal. Code Regs., tit. 2, § 11019(b)(2~~1~~).
- “Harassment is distinguishable from discrimination under the FEHA. ‘[D]iscrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace.’” (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 869 [172 Cal.Rptr.3d 732].)
- “[H]arassment consists of a type of conduct not necessary for performance of a supervisory job. Instead, harassment consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other

personal motives. Harassment is not conduct of a type necessary for management of the employer's business or performance of the supervisory employee's job.” (*Reno v. Baird* (1998) 18 Cal.4th 640, 645–646 [76 Cal.Rptr.2d 499, 957 P.2d 1333], internal citations omitted.)

- “No supervisory employee needs to use slurs or derogatory drawings, to physically interfere with freedom of movement, to engage in unwanted sexual advances, etc., in order to carry out the legitimate objectives of personnel management. Every supervisory employee can insulate himself or herself from claims of harassment by refraining from such conduct.” (*Serri, supra*, 226 Cal.App.4th at p. 869.)
- “We conclude, therefore, that the Legislature intended that commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like, do not come within the meaning of harassment. These are actions of a type necessary to carry out the duties of business and personnel management. These actions may retrospectively be found discriminatory if based on improper motives, but in that event the remedies provided by the FEHA are those for discrimination, not harassment. Harassment, by contrast, consists of actions outside the scope of job duties which are not of a type necessary to business and personnel management. This significant distinction underlies the differential treatment of harassment and discrimination in the FEHA.” (*Reno, supra*, 18 Cal.4th at pp. 646-647, internal citation omitted.)
- “[W]e can discern no reason why an employee who is the victim of discrimination based on some official action of the employer cannot also be the victim of harassment by a supervisor for abusive messages that create a hostile working environment, and under the FEHA the employee would have two separate claims of injury.” (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707 [101 Cal.Rptr.3d 773, 219 P.3d 749].)
- “Here, [plaintiff]'s *discrimination* claim sought compensation for official employment actions that were motivated by improper bias. These discriminatory actions included not only the termination itself but also official employment actions that preceded the termination, such as the progressive disciplinary warnings and the decision to assign [plaintiff] to answer the office telephones during office parties. [Plaintiff]'s *harassment* claim, by contrast, sought compensation for hostile social interactions in the workplace that affected the workplace environment because of the offensive message they conveyed to [plaintiff]. These harassing actions included [supervisor]'s demeaning comments to [plaintiff] about her body odor and arm sores, [supervisor]'s refusal to respond to [plaintiff]'s greetings, [supervisor]'s demeaning facial expressions and gestures toward [plaintiff], and [supervisor]'s disparate treatment of [plaintiff] in handing out small gifts. None of these events can fairly be characterized as an official employment action. None involved [supervisor]'s exercising the authority that [employer] had delegated to her so as to cause [employer], in its corporate capacity, to take some action with respect to [plaintiff]. Rather, these were events that were unrelated to [supervisor]'s managerial role, engaged in for her own purposes.” (*Roby, supra*, 47 Cal.4th at pp. 708–709, original italics, footnote omitted.)
- “[S]ome official employment actions done in furtherance of a supervisor's managerial role can

also have a secondary effect of communicating a hostile message. This occurs when the actions establish a widespread pattern of bias. Here, some actions that [supervisor] took with respect to [plaintiff] are best characterized as official employment actions rather than hostile social interactions in the workplace, but they may have contributed to the hostile message that [supervisor] was expressing to [plaintiff] in other, more explicit ways. These would include [supervisor]'s shunning of [plaintiff] during staff meetings, [supervisor]'s belittling of [plaintiff]'s job, and [supervisor]'s reprimands of [plaintiff] in front of [plaintiff]'s coworkers. Moreover, acts of discrimination can provide evidentiary support for a harassment claim by establishing discriminatory animus on the part of the manager responsible for the discrimination, thereby permitting the inference that rude comments or behavior by that same manager were similarly motivated by discriminatory animus.” (*Roby, supra*, 47 Cal.4th at p. 709.)

- “[A]busive conduct that is not facially sex specific can be grounds for a hostile environment sexual harassment claim *if it is inflicted because of gender*, i.e., if men and women are treated differently and the conduct is motivated by gender bias.” (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 130 [129 Cal.Rptr.3d 384], original italics.)

### ***Secondary Sources***

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-B, *Sexual Harassment*, ¶¶ 10:125–10:155 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Sexual and Other Harassment, §§ 3.13, 3.36

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.80[1][a][i] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 2:56, 2:56.50 (Thomson Reuters)

**2527. Failure to Prevent Harassment, Discrimination, or Retaliation—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, § 12940(k))**

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[*Name of plaintiff*] claims that [*name of defendant*] failed to take all reasonable steps to prevent [harassment/discrimination/retaliation] [based on [*describe protected status—e.g., race, gender, or age*]]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. That [*name of plaintiff*] [was an employee of [*name of defendant*]/applied to [*name of defendant*] for a job/was a person providing services under a contract with [*name of defendant*]];
  2. That [*name of plaintiff*] was subjected to [harassment/discrimination/retaliation] in the course of employment;
  3. That [*name of defendant*] failed to take all reasonable steps to prevent the [harassment/discrimination/retaliation];
  4. That [*name of plaintiff*] was harmed; and
  5. That [*name of defendant*]'s failure to take all reasonable steps to prevent [harassment/discrimination/retaliation] was a substantial factor in causing [*name of plaintiff*]'s harm.
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*New June 2006; Revised April 2007, June 2013, December 2015*

**Directions for Use**

Give this instruction after the appropriate instructions in this series on the underlying claim for discrimination, retaliation, or harassment if the employee also claims that the employer failed to prevent the conduct. (See Gov. Code, § 12940(k).) Read the bracketed language in the opening paragraph beginning with “based on” if the claim is for failure to prevent harassment or discrimination.

For guidance for a further instruction on what constitutes “reasonable steps,” see section 11019(b)(43) of Title 2 of the California Code of Regulations.

**Sources and Authority**

- Prevention of Discrimination and Harassment. Government Code section 12940(k).
- “The employer’s duty to prevent harassment and discrimination is affirmative and mandatory.” (*Northrop Grumman Corp. v. Workers’ Comp. Appeals Bd.* (2002) 103 Cal.App.4th 1021, 1035 [127 Cal. Rptr. 2d 285].)
- “This section creates a tort that is made actionable by statute. ‘ “[T]he word “tort” means a civil wrong, other than a breach of contract, for which the law will provide a remedy in the form of an

action for damages.’ ‘It is well settled the Legislature possesses a broad authority ... to establish ... tort causes of action.’ Examples of statutory torts are plentiful in California law.” ’ Section 12960 et seq. provides procedures for the prevention and elimination of unlawful employment practices. In particular, section 12965, subdivision (a) authorizes the Department of Fair Employment and Housing (DFEH) to bring an accusation of an unlawful employment practice if conciliation efforts are unsuccessful, and section 12965, subdivision (b) creates a private right of action for damages for a complainant whose complaint is not pursued by the DFEH.” (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 286 [73 Cal.Rptr.2d 596], internal citations omitted.)

- “With these rules in mind, we examine the section 12940 claim and finding with regard to whether the usual elements of a tort, enforceable by private plaintiffs, have been established: Defendants’ legal duty of care toward plaintiffs, breach of duty (a negligent act or omission), legal causation, and damages to the plaintiff.” (*Trujillo, supra*, 63 Cal.App.4th at pp. 286–287, internal citation omitted.)
- “[C]ourts have required a finding of actual discrimination or harassment under FEHA before a plaintiff may prevail under section 12940, subdivision (k).” (*Dickson v. Burke Williams, Inc.* (2015) 234 Cal.App.4th 1307, 1314 [184 Cal.Rptr.3d 774].)
- “Also, there is a significant question of how there could be legal causation of any damages (either compensatory or punitive) from such a statutory violation, where the only jury finding was the failure to prevent actionable harassment or discrimination, which, however, did not occur.” (*Trujillo, supra*, 63 Cal.App.4th at p. 289.)
- “[T]he "Directions for Use" to CACI No. 2527 (2015), ... states that the failure to prevent instruction should be given ‘after the appropriate instructions in this series on the underlying claim for . . . harassment if the employee also claims that the employer failed to prevent the conduct.’ An instruction on the elements of an underlying sexual harassment claim would be unnecessary if the failure to take reasonable steps necessary to prevent a claim for harassment could be based on harassing conduct that was not actionable harassment.” (*Dickson, supra*, 234 Cal.App.4th at p. 1317.)
- “In accordance with ... the fundamental public policy of eliminating discrimination in the workplace under the FEHA, we conclude that retaliation is a form of discrimination actionable under [Gov. Code] section 12940, subdivision (k).” (*Taylor v. City of Los Angeles Dept. of Water & Power* (2006) 144 Cal.App.4th 1216, 1240 [51 Cal.Rptr.3d 206], disapproved on other grounds in *Jones v. The Lodge at Torrey Pines Partnership* (2008), 42 Cal. 4th 1158 [72 Cal. Rptr. 3d 624, 177 P.3d 232].)
- “[Defendant] suggests that a separate element in CACI No. 2527 requiring [plaintiff] to prove that the failure to prevent discrimination or retaliation was ‘a substantial factor in causing her harm’ is equivalent to the disputed element in the other CACI instructions requiring [plaintiff] to prove that her pregnancy-related leave was ‘a motivating reason’ for her discharge. However, the ‘substantial factor in causing harm’ element in CACI No. 2527 does not concern the causal relationship between the adverse employment action and the plaintiff’s protected status or activity. Rather, it concerns the causal relationship between the discriminatory or retaliatory conduct, if proven, and the plaintiff’s injury.” (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 480 [161 Cal.Rptr.3d 758].)

***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 921

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, Title VII And The California Fair Employment and Housing Act, ¶¶ 7:670–7:672 (The Rutter Group)

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.02[6], 41.80[1], 41.81[7] (Matthew Bender)

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01[10][g] (Matthew Bender)



**2700. Nonpayment of Wages—Essential Factual Elements (Lab. Code, §§ 201, 202, 218)**

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[Name of plaintiff] claims that [name of defendant] owes [him/her] unpaid wages. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of plaintiff] performed work for [name of defendant];
2. That [name of defendant] owes [name of plaintiff] wages under the terms of the employment; and
3. The amount of unpaid wages.

**“Wages” includes all amounts for labor performed by an employee, whether the amount is calculated by time, task, piece, commission, or some other method.**

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*New September 2003; Revised December 2005, December 2013, June 2015*

**Directions for Use**

This instruction is for use in a civil action for payment of wages. Depending on the allegations in the case, the definition of “wages” may be modified to include additional compensation, such as earned vacation, nondiscretionary bonuses, or severance pay.

Wage and hour claims are governed by two sources of authority: the provisions of the Labor Code and a series of 18 wage orders, adopted by the Industrial Welfare Commission. All of the wage orders define hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (See, e.g., Wage Order 4, subd. 2(K).) The two parts of the definition are independent factors, each of which defines whether certain time spent is compensable as “hours worked.” Thus, an employee who is subject to an employer's control does not have to be working during that time to be compensated. Courts have identified various factors bearing on an employer's control during on-call time. However, what qualifies as hours worked is a question of law. (*Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 838–840 [182 Cal.Rptr.3d 124, 340 P.3d 355].) Therefore, the jury should not be instructed on the factors to consider in determining whether the employer has exercised sufficient control over the employee during the contested period to require compensation.

However, the jury should be instructed to find any disputed facts regarding the factors. For example, one factor is whether a fixed time limit for the employee to respond to a call was unduly restrictive. Whether there was a fixed time limit would be a disputed fact for the jury. Whether it was unduly restrictive would be a matter of law for the court.

The court may modify this instruction or write an appropriate instruction if the defendant employer claims a permissible setoff from the plaintiff employee's unpaid wages. Under California Wage Orders, an employer may deduct from an employee's wages for cash shortage, breakage, or loss of equipment if

the employer proves that this was caused by a dishonest or willful act or by the gross negligence of the employee. (See, e.g., Cal. Code Regs., tit. 8, § 11010, subd. 8.)

### Sources and Authority

- Right of Action for Wage Claim. Labor Code section 218.
- Wages Due on Discharge. Labor Code section 201.
- Wages Due on Quitting. Labor Code section 202.
- “Wages” Defined, Labor Code section 200.
- Wages Partially in Dispute. Labor Code section 206(a).
- Deductions From Pay. Labor Code section 221, California Code of Regulations, Title 8, section 11010, subdivision 8.
- Nonapplicability to Government Employers. Labor Code section 220.
- Employer Not Entitled to Release. Labor Code section 206.5.
- Private Agreements Prohibited. Labor Code section 219(a).
- “As an employee, appellant was entitled to the benefit of wage laws requiring an employer to promptly pay all wages due, and prohibiting the employer from deducting unauthorized expenses from the employee's wages, deducting for debts due the employer, or recouping advances absent the parties' express agreement.” (Davis v. Farmers Ins. Exchange (2016) 245 Cal.App.4th 1302, 1330 [200 Cal.Rptr.3d 315].)
- “The Labor Code's protections are ‘designed to ensure that employees receive their full wages at specified intervals while employed, as well as when they are fired or quit,’ and are applicable not only to hourly employees, but to highly compensated executives and salespeople.” (Davis, supra, 245 Cal.App.4th at p. 1331, internal citation omitted.)
- “[W]ages include not just salaries earned hourly, but also bonuses, profit-sharing plans, and commissions.” (Davis, supra, 245 Cal.App.4th at p. 1332, fn. 20.)
- “[A]n employee's on-call or standby time may require compensation.” (Mendiola, supra, 60 Cal.4th at p. 840.)
- “[Labor Code] section 221 has long been held to prohibit deductions from an employee’s wages for cash shortages, breakage, loss of equipment, and other business losses that may result from the employee’s simple negligence.” (Hudgins v. Neiman Marcus Group, Inc. (1995) 34 Cal.App.4th 1109, 1118 [41 Cal.Rptr.2d 46].)

- “[A]n employer is not entitled to a setoff of debts owing it by an employee against any wages due that employee.” (*Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 6 [177 Cal.Rptr. 803].)

### ***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 398, 399

Chin et al., California Practice Guide: Employment Litigation, Ch.1-A, *Background*, ¶ 1:22 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-B, *Coverage And Exemptions—In General*, ¶ 11:121 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch.11-D, *Payment Of Wages*, ¶¶ 11:456, 11:470, 11:470.1, 11:512–11.514 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch.11-J, *Enforcing California Laws Regulating Employee Compensation*, ¶ 11:1459 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 5, *Administrative and Judicial Remedies Under Wage and Hour Laws*, § 5.40 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, §§ 250.13[1][a], 250.40[3][a], 250.65 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 4:67, 4:75 (Thomson Reuters)

**2704. Damages—Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218)**

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If you decide that *[name of plaintiff]* has proved **[his/her]** claim against *[name of defendant]* for **[unpaid wages/[insert other claim]]**, then *[name of plaintiff]* may be entitled to receive an award of a civil penalty based on the number of days *[name of defendant]* failed to pay **[his/her]** **[wages/other]** when due.

To recover the civil penalty, *[name of plaintiff]* must prove all of the following:

1. The date on which *[name of plaintiff]*'s employment ended;
2. **[That *[name of defendant]* failed to pay all wages due by *[insert date]*];**  
*[or]*  
**[The date on which *[name of defendant]* paid *[name of plaintiff]* all wages due;]**
3. *[Name of plaintiff]*'s daily wage rate at the time **[his/her]** employment with *[name of defendant]* ended; and
4. That *[name of defendant]* willfully failed to pay these wages.

The term “wages” includes all amounts for labor performed by an employee, whether the amount is calculated by time, task, piece, commission, or some other method.

The term “willfully” means that the employer intentionally failed or refused to pay the wages.

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*New September 2003; Revised June 2005*

**Directions for Use**

This instruction is intended to instruct the jury on factual determinations required to assist the court in calculating waiting time penalties under Labor Code section 203. The court must determine when final wages are due based on the circumstances of the case and applicable law—see Labor Code sections 201 and 202. If there is a factual dispute, for example, whether plaintiff gave advance notice of his or her intention to quit, or whether payment of final wages by mail was authorized by plaintiff, the court may be required to give further instruction to the jury. Final wages generally are due on the day an employee is discharged by the employer, but are not due for 72 hours if an employee quits without notice (see Lab. Code, §§ 201, 201.5, 201.7, 202, 205.5).

The definition of “wages” may be deleted as redundant if it is redundant with other instructions.

**Sources and Authority**

- Wages of Discharged Employee Due Immediately. Labor Code section 201.
- Willful Failure to Pay Wages of Discharged Employee. Labor Code section 203.
- Right of Action for Unpaid Wages. Labor Code section 218.
- Wages of Contract Employee on Quitting. Labor Code section 202.
- “Wages” Defined. Labor Code section 200.
- Payment for Accrued Vacation of Terminated Employee. Labor Code section 227.3.
- Wages Partially in Dispute. Labor Code section 206(a).
- “[T]he public policy in favor of full and prompt payment of an employee’s earned wages is fundamental and well established ...’ and the failure to timely pay wages injures not only the employee, but the public at large as well. We have also recognized that sections 201, 202, and 203 play an important role in vindicating this public policy. To that end, the Legislature adopted the penalty provision as a disincentive for employers to pay final wages late. It goes without saying that a longer statute of limitations for section 203 penalties provides additional incentive to encourage employers to pay final wages in a prompt manner, thus furthering the public policy.” (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1400 [117 Cal.Rptr.3d 377, 241 P.3d 870], internal citations omitted.)
- “The purpose of section 203 is to compel the prompt payment of earned wages; the section is to be given a reasonable but strict interpretation.” (*Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7 [177 Cal.Rptr. 803].)
- “The statutory policy favoring prompt payment of wages applies to employees who retire, as well as those who quit for other reasons.” (*McLean v. State* (2016) 1 Cal.5th 615, 626 [206 Cal.Rptr.3d 545, 377 P.3d 796].)
- “ “[T]o be at fault within the meaning of [section 203], the employer's refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the employer knows to be due. As used in section 203, ‘willful’ merely means that the employer intentionally failed or refused to perform an act which was required to be done.” ...’ ” (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 54 [155 Cal.Rptr.3d 18].)
- “[A]n employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness.” (*Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468 [155 Cal.Rptr.3d 915].)
- “A proper reading of section 203 mandates a penalty equivalent to the employee’s daily wages for each day he or she remained unpaid up to a total of 30 days. ... [¶] [T]he critical computation required by section 203 is the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days.” (*Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [80 Cal.Rptr.2d 175].)

- “ ‘A tender of the wages due at the time of the discharge, if properly made and in the proper amount, terminates the further accumulation of penalty, but it does not preclude the employee from recovering the penalty already accrued.’ ” (*Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal.App.2d Supp. 897, 899 [315 P.2d 116], citation omitted.)
- “In light of the unambiguous statutory language, as well as the practical difficulties that would arise under defendant’s interpretation, we conclude there is but one reasonable construction: section 203(b) contains a single, three-year limitations period governing all actions for section 203 penalties irrespective of whether an employee’s claim for penalties is accompanied by a claim for unpaid final wages.” (*Pineda, supra*, 50 Cal.4th at p. 1398.)

### **Secondary Sources**

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 398, 399

[Chin et al., California Practice Guide: Employment Litigation, Ch. 1-A, Introduction—Background, ¶1:22 \(The Rutter Group\)](#)

[Chin et al., California Practice Guide: Employment Litigation, Ch. 11-B, Compensation— Coverage and Exemptions—In General, ¶¶11:121](#)

[Chin et al., California Practice Guide: Employment Litigation, Ch. 11-D, Compensation— Payment of Wages, ¶¶11:456, 11:470.1, 11:510, 11:513–11:515](#)

[Chin et al., California Practice Guide: Employment Litigation, Ch. 11-J, Compensation—Enforcing California Laws Regulating Employee Compensation, ¶¶ 11:1458–11:1459, 11:1461–11:1461.1 \(The Rutter Group\)](#)

[Chin et al., California Practice Guide: Employment Litigation, Ch. 17-B, Remedies—Contract Damages, ¶17:148 \(The Rutter Group\)](#)

[Chin et al., California Practice Guide: Employment Litigation, ¶¶ 1:22, 5:173, 11:121, 11:456, 11:470.1, 11:499, 11:510, 11:513–11:515, 11:1458–11:1459, 11:1461–11:1461.1, 12:2331–11:2332, 17:148 \(The Rutter Group\)](#)

1 Wilcox, California Employment Law, Ch. 5, *Administrative and Judicial Remedies Under Wage and Hour Laws*, § 5.40 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.16[2][d] (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 4:67, 4:74 (Thomson Reuters)

**3001. Local Government Liability—Policy or Custom—Essential Factual Elements (42 U.S.C. § 1983)**

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[Name of plaintiff] claims that [he/she] was deprived of [his/her] civil rights as a result of an official [policy/custom] of the [name of local governmental entity]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That the [name of local governmental entity] had an official [policy/custom] [specify policy or custom];
  2. That [name of officer or employee] was an [officer/employee/[other]] of [name of local governmental entity];
  3. That [name of officer or employee] [intentionally/[insert other applicable state of mind]] [insert conduct allegedly violating plaintiff's civil rights];
  4. That [name of officer or employee]'s conduct violated [name of plaintiff]'s right [specify right];
  5. That [name of officer or employee] acted because of this official [policy/custom].
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*New September 2003; Revised December 2010; Renumbered from CACI No. 3007 and Revised December 2012*

**Directions for Use**

Give this instruction and CACI No. 3002, “*Official Policy or Custom*” Explained, if the plaintiff seeks to hold a local governmental entity liable for a civil rights violation based on the entity’s official policy or custom. First give CACI No. 3000, *Violation of Federal Civil Rights—In General—Essential Factual Elements*, and the instructions on the particular constitutional violation alleged.

In element 3, a constitutional violation is not always based on intentional conduct. Insert the appropriate level of scienter. For example, Eighth Amendment cases involving failure to provide a prisoner with proper medical care require “deliberate indifference.” (See *Hudson v. McMillian* (1992) 503 U.S. 1, 5 [112 S.Ct. 995, 117 L.Ed.2d 156].) And Fourth Amendment claims require an “unreasonable” search or seizure. (See *Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento* (1996) 51 Cal.App.4th 1468, 1477 [59 Cal.Rptr.2d 834].)

For other theories of liability against a local governmental entity, see CACI No. 3003, *Local Government Liability—Failure to Train—Essential Factual Elements*, and CACI No. 3004, *Local Government Liability—Act or Ratification by Official With Final Policymaking Authority—Essential Factual Elements*.

**Sources and Authority**

- “[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” (*Monell v. Dept. of Social Services of New York* (1978) 436 U.S. 658, 694 [98 S.Ct. 2131, 56 L.Ed.2d 611].)
- Local governmental entities “ ‘can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted. ...’ ” Local governmental entities also can be sued “ ‘for constitutional deprivations visited pursuant to governmental “custom.” ’ ” In addition, “ ‘[t]he plaintiff must ... demonstrate that, through its *deliberate* conduct, the municipality was the “moving force” behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.’ ” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1147 [119 Cal.Rptr.2d 709, 45 P.3d 1171], internal citations omitted.)
- “Entity liability may arise in one of two forms. The municipality may itself have directed the deprivation of federal rights through an express government policy. This was the situation in *Monell*, where there was an explicit policy requiring pregnant government employees to take unpaid leaves of absence before such leaves were medically required. ... Alternatively, the municipality may have in place a custom or practice so widespread in usage as to constitute the functional equivalent of an express policy.” (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 328 [103 Cal.Rptr.2d 339].)
- “ ‘[I]n order to successfully maintain an action under 42 United States Code section 1983 against governmental defendants for the tortious conduct of employees under federal law, it is necessary to establish that the conduct occurred in execution of a government’s policy or custom promulgated either by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.’ ” (*Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1564 [266 Cal.Rptr. 682], internal citations omitted.)
- “Under *Monell*, a local government body can be held liable under § 1983 for policies of inaction as well as policies of action. A policy of action is one in which the government body itself violates someone's constitutional rights, or instructs its employees to do so; a policy of inaction is based on a government body's ‘failure to implement procedural safeguards to prevent constitutional violations.’ ” (*Jackson v. Barnes* (9th Cir. 2014) 749 F.3d 755, 763], internal citations omitted.)
- “[T]he City argues that, in order to prevail on a *Monell* claim, [plaintiff] must prove that the City's policy amounts to deliberate indifference of her constitutional right ... . Once again, the City relies on an inapplicable part of our *Monell* jurisprudence: the ‘deliberate indifference’ requirement applies only to claims involving allegations of constitutional deprivations resulting from governmental inaction or omission, such as a failure to adequately train. Because [plaintiff] claims her constitutional deprivation resulted from a City policy and affirmative government conduct — training [dog] to ‘bite and hold’ and releasing [dog] off-lead into Suite 201 — the ‘deliberate indifference’ analysis does not apply.” (*Lowry v. City of San Diego* (9th Cir. 2016) 818 F.3d 840, 855.)



- “Normally, the question of whether a policy or custom exists would be a jury question. However, when there are no genuine issues of material fact and the plaintiff has failed to establish a prima facie case, disposition by summary judgment is appropriate.” (*Trevino v. Gates* (9th Cir. 1996) 99 F.3d 911, 920.)
- “A triable issue exists as to whether the root of the unconstitutional behavior exhibited in [plaintiff]’s case lies in the unofficial operating procedure of [defendant] County or in the errant acts of individual social workers, and this question should go to a jury.” (*Kirkpatrick v. County of Washoe* (9th Cir. 2015) 792 F.3d 1184, 11xx.)
- “At most, *Monell* liability adds an additional defendant, a municipality, to the universe of actors who will be jointly and severally liable for the award.” (*Choate, supra*, 86 Cal.App.4th at p. 328.)
- “Any damages resulting from a possible *Monell* claim would result from the same constitutional violation of the warrantless arrest which resulted in nominal damages. Even if [plaintiff] were to prove the City failed to adequately train the police officers, the result would simply be another theory of action concerning the conduct the jury has already determined was not the proximate cause of [plaintiff]’s injuries. [Plaintiff]’s recovery, if any, based upon a *Monell* claim would be limited to nominal damages.” (*George v. Long Beach* (9th Cir. 1992) 973 F.2d 706, 709.)
- “Local governmental bodies such as cities and counties are considered ‘persons’ subject to suit under section 1983. States and their instrumentalities, on the other hand, are not.” (*Kirchmann v. Lake Elsinore Unified School Dist.* (2000) 83 Cal.App.4th 1098, 1101 [100 Cal.Rptr.2d 289], internal citations omitted.)
- “A municipality can be sued under section 1983 for ‘constitutional deprivations visited pursuant to governmental “custom.”’ However, ‘Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, ... a municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.’ ” (*Marshall v. County of San Diego* (2015) 238 Cal.App.4th 1095, 1118 [190 Cal.Rptr.3d 97], original italics, internal citation omitted.)
- “A local governmental unit is liable only if the alleged deprivation of rights ‘implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers,’ or when the injury is in ‘execution of a [local] government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.’ ” (*County of Los Angeles v. Superior Court* (1998) 68 Cal.App.4th 1166, 1171 [80 Cal.Rptr.2d 860], internal citations omitted.)
- “A municipality’s policy or custom resulting in constitutional injury may be actionable even though the individual public servants are shielded by good faith immunity.” (*Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 568 [195 Cal.Rptr. 268], internal citations omitted.)
- “No punitive damages can be awarded against a public entity.” (*Choate, supra*, 86 Cal.App.4th at p.

328, internal citation omitted.)

- “[T]he requirements of *Monell* do apply to suits against private entities under § 1983. ... [W]e see no basis in the reasoning underlying *Monell* to distinguish between municipalities and private entities acting under color of state law.” (*Tsao v. Desert Palace, Inc.* (9th Cir. 2012) 698 F.3d 1128, 1139, internal citations omitted.)

### *Secondary Sources*

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 816, 819 et seq.

17A Moore’s Federal Practice (3d ed.), Ch.123, *Access to Courts: Eleventh Amendment and State Sovereign Immunity*, § 123.23 (Matthew Bender)

1 Civil Rights Actions, Ch. 2, *Governmental Liability and Immunity*, ¶ 2.03[2][a] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes*, § 113.14 (Matthew Bender)

**3004. Local Government Liability—Act or Ratification by Official With Final Policymaking Authority—Essential Factual Elements (42 U.S.C. § 1983)**

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[Name of plaintiff] claims that [he/she] was deprived of [his/her] civil rights as a result of [specify alleged unconstitutional conduct, e.g., being denied a parade permit because of the political message of the parade]. [Name of official] is the person responsible for establishing final policy with respect to [specify subject matter, e.g., granting parade permits] for [name of local governmental entity].

To establish that [name of local governmental entity] is responsible for this deprivation, [name of plaintiff] must prove all of the following:

1. That [name of plaintiff]’s right [specify right violated] was violated;
2. That [name of official] was the person who [either] [actually [made the decision/committed the acts]/ [or] later personally ratified the [decision/acts]] that led to the deprivation of [name of plaintiff]’s civil rights;
3. That [name of official]’s [acts/decision] [was/were] a conscious and deliberate choice to follow a course of action from among various alternatives; and
4. That [name of official] [[made the decision/committed the acts]/ [or] approved the [decision/acts]] with knowledge of [specify facts constituting the alleged unlawful conduct].

[[Name of official] “ratified” the decision if [he/she] knew the unlawful reason for the decision and personally approved it after it had been made.]

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*New December 2010; Renumbered from CACI No. 3010 December 2012*

**Directions for Use**

Give this instruction if the plaintiff seeks to hold a local governmental entity liable for a civil rights violation based on the acts of an official with final policymaking authority. First give CACI No. 3000, *Violation of Federal Civil Rights—In General—Essential Factual Elements*, and the instructions on the particular constitutional violation alleged.

Liability may be based on either the official’s personal acts or policy decision that led to the violation or the official’s subsequent ratification of the acts or decision of another. (See *Gillette v. Delmore* (9th Cir. 1992) 979 F.2d 1342, 1346–1347.) If both theories are alleged in the alternative, include “either” in element 1. Include the last paragraph if ratification is alleged.

For other theories of liability against a local governmental entity, see CACI No. 3001, *Local Government Liability—Policy or Custom—Essential Factual Elements*, and CACI No. 3003, *Local Government Liability—Failure to Train—Essential Factual Elements*.

The court determines whether a person is an official policymaker under state law. (See *Jett v. Dallas Independent School Dist.* (1989) 491 U.S. 701, 737 [109 S.Ct. 2702, 105 L.Ed.2d 598].)

### Sources and Authority

- “[A] local government may be held liable under § 1983 when ‘the individual who committed the constitutional tort was an official with final policy-making authority’ or such an official ‘ratified a subordinate’s unconstitutional decision or action and the basis for it.’ ‘If the authorized policymakers approve a subordinate’s decision and the basis for it, their ratification would be chargeable to the municipality because their decision is final.’ ‘There must, however, be evidence of a conscious, affirmative choice’ on the part of the authorized policymaker. A local government can be held liable under § 1983 ‘only where “a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.” ’ ” (*Clouthier v. County of Contra Costa* (9th Cir. 2010) 591 F.3d 1232, 1250, internal citations omitted.)
- “Two terms ago, ... we undertook to define more precisely when a decision on a single occasion may be enough to establish an unconstitutional municipal policy. ... First, a majority of the Court agreed that municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, ‘that is, acts which the municipality has officially sanctioned or ordered.’ Second, only those municipal officials who have ‘final policymaking authority’ may by their actions subject the government to § 1983 liability. Third, whether a particular official has ‘final policymaking authority’ is a question of state law. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the city’s business.” (*St. Louis v. Praprotnik* (1988) 485 U.S. 112, 123 [108 S.Ct. 915, 99 L.Ed.2d 107], internal citations omitted.)
- —“[A] municipality may be liable for an ‘isolated constitutional violation when the person causing the violation has final policymaking authority.’ ” (*Garmon v. County of L.A.* (9th Cir. 2016) 828 F.3d 837, --, internal citation omitted.) ~~A municipality can be liable even for an isolated constitutional violation ... when the person causing the violation has final policymaking authority.”~~ (*Webb v. Sloan* (9th Cir. 2003) 330 F.3d 1158, 1164.)
- “As with other questions of state law relevant to the application of federal law, the identification of those officials whose decisions represent the official policy of the local governmental unit is itself a legal question to be resolved by the trial judge *before* the case is submitted to the jury.” (*Jett, supra*, 491 U.S. at p. 737, original italics.)
- “Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him.” (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73 [104 Cal.Rptr. 57, 500 P.2d 1401].)
- “[R]atification requires, among other things, knowledge of the alleged constitutional violation.” (*Christie v. Iopa* (9th Cir. 1999) 176 F.3d 1231, 1239, internal citations omitted.)

- “[A] policymaker's mere refusal to overrule a subordinate's completed act does not constitute approval.” (*Christie, supra*, 176 F.3d at p. 1239.)
- “At most, *Monell* liability adds an additional defendant, a municipality, to the universe of actors who will be jointly and severally liable for the award.” (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 328 [103 Cal.Rptr.2d 339].)
- “Any damages resulting from a possible *Monell* claim would result from the same constitutional violation of the warrantless arrest which resulted in nominal damages. Even if [plaintiff] were to prove the City failed to adequately train the police officers, the result would simply be another theory of action concerning the conduct the jury has already determined was not the proximate cause of [plaintiff]’s injuries. [Plaintiff]’s recovery, if any, based upon a *Monell* claim would be limited to nominal damages.” (*George v. Long Beach* (9th Cir. 1992) 973 F.2d 706, 709.)

### ***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 830

17A Moore’s Federal Practice (3d ed.), Ch.123, *Access to Courts: Eleventh Amendment and State Sovereign Immunity*, § 123.23 (Matthew Bender)

1 Civil Rights Actions, Ch. 2, *Governmental Liability and Immunity*, ¶ 2.03[2][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes*, § 113.12 (Matthew Bender)

**3020. Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements  
(42 U.S.C. § 1983)**

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**[Name of plaintiff] claims that [name of defendant] used excessive force in [arresting/detaining] [him/her]. To establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of defendant] used force in [arresting/detaining] [name of plaintiff];**
- 2. That the force used by [name of defendant] was excessive;**
- 3. That [name of defendant] was acting or purporting to act in the performance of [his/her] official duties;**
- 4. That [name of plaintiff] was harmed; and**
- 5. That [name of defendant]’s use of excessive force was a substantial factor in causing [name of plaintiff]’s harm.**

**Force is not excessive if it is reasonably necessary under the circumstances. In deciding whether force is reasonably necessary or excessive, you should determine, based on all of the facts and circumstances, what force a reasonable law enforcement officer on the scene would have used under the same or similar circumstances. You should consider the following:**

- (a) Whether [name of plaintiff] reasonably appeared to pose an immediate threat to the safety of [name of defendant] or others;**
- (b) The seriousness of the crime at issue; [and]**
- (c) Whether [name of plaintiff] was actively [resisting [arrest/detention]/ [or] attempting to avoid [arrest/detention] by flight][./; and]**
- (d) [specify other factors particular to the case].**

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*New September 2003; Revised June 2012; Renumbered from CACI No. 3001 December 2012; Revised June 2015, June 2016*

**Directions for Use**

The “official duties” referred to in element 3 must be duties created by a state, county, or municipal law, ordinance, or regulation. This aspect of color of law most likely will not be an issue for the jury, so it has been omitted to shorten the wording of element 3.

The three factors (a), (b), and (c) listed are often referred to as the “*Graham* factors.” (See *Graham v.*

*Connor* (1989) 490 U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) The *Graham* factors are not exclusive. (See *Glenn v. Wash. County* (9th Cir. 2011) 661 F.3d 460, 467–468.) Additional factors may be added if appropriate to the facts of the case.

Additional considerations and verdict form questions will be needed if there is a question of fact as to whether the defendant law enforcement officer had time for reflective decision-making before applying force. If the officers' conduct required a reaction to fast-paced circumstances presenting competing public safety obligations, the plaintiff must prove intent to harm. (See *Green v. County of Riverside* (2015) 238 Cal.App.4th 1363, 1372 [190 Cal.Rptr.3d 693].)

No case has yet determined, and therefore it is unclear, whether the defense has either the burden of proof or the burden of producing evidence on reaction to fast-paced circumstances. (See Evid. Code, §§ 500 [party has burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense asserted], 550 [burden of producing evidence as to particular fact is on party against whom a finding on the fact would be required in absence of further evidence].)

For an instruction for use in a negligence claim under California common law based on the same event and facts, see CACI No. 440, *Unreasonable Force by Law Enforcement Officer in Arrest or Other Seizure—Essential Factual Elements*. For an instruction for use alleging excessive force as a battery, see CACI No. 1305, *Battery by Police Officer*.

### Sources and Authority

- “In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. In most instances, that will be either the Fourth Amendment’s prohibition against unreasonable seizures of the person, or the Eighth Amendment’s ban on cruel and unusual punishments, which are the two primary sources of constitutional protection against physically abusive governmental conduct.” (*Graham, supra*, 490 U.S. at p. 395, internal citations and footnote omitted.)
- “Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right ‘to be secure in their persons ... against unreasonable ... seizures’ of the person.” (*Graham, supra*, 490 U.S. at p. 394.)
- “[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach.” (*Graham, supra*, 490 U.S. at p. 395.)
- “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Graham, supra*, 490 U.S. at p. 396.)
- “Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ ... its proper application requires careful attention to the facts

and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Graham, supra*, 490 U.S. at p. 396, internal citation omitted.)

- “The most important of these [factors from *Graham*, above] is whether the suspect posed an immediate threat to the officers or others, as measured objectively under the circumstances.” (*Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 712 [141 Cal.Rptr.3d 553] .)
- “[The *Graham*] factors, however, are not exclusive. We ‘examine the totality of the circumstances and consider “whatever specific factors may be appropriate in a particular case, whether or not listed in *Graham*.”’ Other relevant factors include the availability of less intrusive alternatives to the force employed, whether proper warnings were given and whether it should have been apparent to officers that the person they used force against was emotionally disturbed.” (*Glenn, supra*, 661 F.3d at p. 467, internal citations omitted.)
- “Courts ‘also consider, under the totality of the circumstances, the quantum of force used to arrest the plaintiff, the availability of alternative methods of capturing or detaining the suspect, and the plaintiff’s mental and emotional state.’ ” (*Brooks v. Clark Cnty.* (9th Cir. 2016) 828 F.3d 910, --.)
- “Because the reasonableness standard ‘nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly.’ ” (*Torres v. City of Madera* (9th Cir. 2011) 648 F.3d 1119, 1125.)
- “Justice Stevens incorrectly declares [the ‘objective reasonableness’ standard under *Graham*] to be ‘a question of fact best reserved for a jury,’ and complains we are ‘usurp[ing] the jury’s factfinding function.’ At the summary judgment stage, however, once we have determined the relevant set of facts and drawn all inferences in favor of the nonmoving party *to the extent supportable by the record*, the reasonableness of [defendant]’s actions--or, in Justice Stevens’ parlance, ‘[w]hether [respondent’s] actions have risen to a level warranting deadly force,’ is a pure question of law.” (*Scott v. Harris* (2007) 550 U.S. 372, 381, fn. 8 [127 S. Ct. 1769; 167 L. Ed. 2d 686], original italics, internal citations omitted.)
- “In the absence of material factual disputes, the objective reasonableness of a police officer’s conduct is ‘a pure question of law.’ ‘Where the objective reasonableness of an officer’s conduct turns on disputed issues of material fact,’ however, ‘it is “a question of fact best resolved by a jury.” ’ ” (*Lowry v. City of San Diego* (2016) (9th Cir. 2016) 818 F.3d 840, 846.)
- “A reasonable jury could find that any belief on the officers’ part that they faced an immediate threat when they released [dog] was unjustified. Thus, viewing the evidence in the light most favorable to [plaintiff], the City has failed to show that there are no questions of fact precluding summary judgment in its favor. [¶][¶] The district court found otherwise, reasoning that the ‘officers reasonably and objectively feared for their own safety and any possible hostage’s safety,’ because they were searching for a ‘burglary suspect . . . at night,’ because they ‘did not know whether the suspect was armed,’ and because the door . . . was ” ‘ajar, but no lights were on inside.’ [¶] A reasonable jury could



easily disagree with this portrayal. The district court's reasoning assumes that any person inside an office building where a security alarm has been tripped at night necessarily poses an immediate threat to their safety or that of others. We find this assumption unwarranted. These facts, standing alone, do not provide an 'articulable basis for believing that' the occupant is 'armed or that [she or] he posed an immediate threat to anyone's safety.' ” (Lowry, supra, 818 F.3d at pp. 849–851, footnotes omitted.)

- “To be sure, the reasonableness inquiry in the context of excessive force balances ‘intrusion[s] on the individual's Fourth Amendment interests’ against the government's interests. But in weighing the evidence in favor of the officers, rather than the [plaintiffs], the district court unfairly tipped the reasonableness inquiry in the officers' favor.” (*Sandoval v. Las Vegas Metro. Police Dep't* (9th Cir. 2014) 756 F.3d 1154, 1167, internal citation omitted.)
- “The Fourth Amendment’s ‘reasonableness’ standard is not the same as the standard of ‘reasonable care’ under tort law, and negligent acts do not incur constitutional liability.” (*Hayes, supra*, 57 Cal.4th at p. 639.)
- “[S]tate negligence law, which considers the totality of the circumstances surrounding any use of deadly force, is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used.” (*Hayes, supra*, 57 Cal.4th at p. 639, internal citations omitted.)
- “We are cognizant of the Supreme Court’s command to evaluate an officer’s actions ‘from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ We also recognize the reality that ‘police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation.’ This does not mean, however, that a Fourth Amendment violation will be found only in those rare instances where an officer and his attorney are unable to find a sufficient number of compelling adjectives to describe the victim’s conduct. Nor does it mean that we can base our analysis on what officers actually felt or believed during an incident. Rather, we must ask if the officers’ conduct is ‘objectively reasonable’ in light of the facts and circumstances confronting them’ without regard for an officer’s subjective intentions.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 831, internal citations omitted.)
- “[A]n officer may not use deadly force to apprehend a suspect where the suspect poses no immediate threat to the officer or others. On the other hand, it is not constitutionally unreasonable to prevent escape using deadly force ‘[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.’ ” (*Wilkinson v. Torres* (9th Cir. 2010) 610 F.3d 546, 550, internal citations omitted.)
- “Resistance, or the reasonable perception of resistance, does not entitle police officers to use any amount of force to restrain a suspect. Rather, police officers who confront actual (or perceived) resistance are only permitted to use an amount of force that is reasonable to overcome that resistance.” (*Barnard v. Theobald* (9th Cir. 2013) 721 F.3d 1069, 1076, internal citations omitted.)
- ” In any event, the court correctly instructed the jury on the mental state required in a Fourteenth Amendment excessive use of force case under section 1983 because this case did not involve

reflective decisionmaking by the officers, but instead their reaction to fast-paced circumstances presenting competing public safety obligations. Given these circumstances, [plaintiff] was required to prove that the officers acted with a purpose to cause harm to her son.” (*Green v. County of Riverside* (2015) 238 Cal.App.4th 1363, 1372 [190 Cal.Rptr.3d 693].)

- “[T]he fact that the ‘suspect was armed with a deadly weapon’ does *not* render the officers' response per se reasonable under the Fourth Amendment. [¶] This is not to say that the Fourth Amendment always requires officers to delay their fire until a suspect turns his weapon on them. If the person is armed—or reasonably suspected of being armed—a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat.” (*George v. Morris* (9th Cir. 2013) 724 F.3d 1191, 1200, original italics, internal citations omitted.)
- “[A] simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern.’ Here, whether objective factors supported [defendant]’s supposed subjective fear is not a question that can be answered as a matter of law based upon the limited evidence in the record, especially given that on summary judgment that evidence must be construed in the light most favorable to [plaintiff], the non-moving party. Rather, whether [defendant]’s claim that he feared a broccoli-based assault is credible and reasonable presents a genuine question of material fact that must be resolved not by a court ruling on a motion for summary judgment but by a jury in its capacity as the trier of fact.” (*Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1163–1164.)
- “An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.” (*Fetters v. County of Los Angeles* (2016) 243 Cal.App.4th 825, 838 [196 Cal.Rptr.3d 848].)
- “Although *Graham* does not specifically identify as a relevant factor whether the suspect poses a threat to *himself*, we assume that the officers could have used some reasonable level of force to try to prevent [decedent] from taking a suicidal act. But we are aware of no published cases holding it reasonable to use a *significant* amount of force to try to stop someone from attempting suicide. Indeed, it would be odd to permit officers to use force capable of causing serious injury or death in an effort to prevent the possibility that an individual might attempt to harm only himself. We do not rule out that in some circumstances some force might be warranted to prevent suicide, but in cases like this one the ‘solution’ could be worse than the problem.” (*Glenn, supra*, 661 F.3d at p. 468.)
- “[W]e have stated that if the police were summoned to the scene to protect a mentally ill offender from himself, the government has less interest in using force. By contrast, if the officer warned the offender that he would employ force, but the suspect refused to comply, the government has an increased interest in the use of force.” (*Marquez v. City of Phoenix* (9th Cir. 2012) 693 F.3d 1167, 1175, internal citation omitted.)
- “[P]reshooting conduct is included in the totality of circumstances surrounding an officer’s use of deadly force, and therefore the officer’s duty to act reasonably when using deadly force extends to preshooting conduct. But in a case like this one, where the preshooting conduct did not cause the plaintiff any injury independent of the injury resulting from the shooting, the reasonableness of the

officers' preshooting conduct should not be considered in isolation. Rather, it should be considered in relation to the question whether the officers' ultimate use of deadly force was reasonable.” (*Hayes, supra*, 57 Cal.4th at p. 632, internal citation omitted.)

- “A person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer by means of physical force or show of authority terminates or restrains his freedom of movement through means intentionally applied.” (*Nelson v. City of Davis* (9th Cir. 2012) 685 F.3d 867, 875.)
- “The Supreme Court has interpreted the phrase ‘under “color” of law’ to mean ‘under “pretense” of law.’ A police officer’s actions are under pretense of law only if they are ‘in some way “related to the performance of his official duties.”’ By contrast, an officer who is ‘“pursuing his own goals and is not in any way subject to control by [his public employer],”’ does not act under color of law, unless he ‘purports or pretends’ to do so. Officers who engage in confrontations for personal reasons unrelated to law enforcement, and do not ‘purport[] or pretend[]’ to be officers, do not act under color of law.” (*Huffman v. County of Los Angeles* (9th Cir. 1998) 147 F.3d 1054, 1058, internal citations omitted.)
- “We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.” (*Heck v. Humphrey* (1994) 512 U.S. 477, 486–487 [114 S.Ct. 2364, 129 L.Ed.2d 383], footnotes and internal citation omitted.)
- “*Heck* requires the reviewing court to answer three questions: (1) Was there an underlying conviction or sentence relating to the section 1983 claim? (2) Would a ‘judgment in favor of the plaintiff [in the section 1983 action] “necessarily imply” ... the invalidity of the prior conviction or sentence?’ (3) ‘If so, was the prior conviction or sentence already invalidated or otherwise favorably terminated?’ ” (*Fetters, supra*, 243 Cal.App.4th at p. 834.)
- “The *Heck* inquiry does not require a court to consider whether the section 1983 claim would establish beyond all doubt the invalidity of the criminal outcome; rather, a court need only ‘consider whether a judgment in favor of the plaintiff would necessarily *imply* the invalidity of his conviction or sentence.’ ” (*Fetters, supra*, 243 Cal.App.4th at p. 841, original italics.)
- “[Plaintiff]’s section 1983 claim *is* barred to the extent it alleges that [the arresting officer] lacked justification to arrest him or to respond with reasonable force to his resistance. The use of deadly

force in this situation, though, requires a separate analysis. ‘For example, a defendant might resist a lawful arrest, to which the arresting officers might respond with excessive force to subdue him. The subsequent use of excessive force would not negate the lawfulness of the initial arrest attempt, or negate the unlawfulness of the criminal defendant’s attempt to resist it. Though occurring in one continuous chain of events, two isolated factual contexts would exist, the first giving rise to criminal liability on the part of the criminal defendant, and the second giving rise to civil liability on the part of the arresting officer.’ ” (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 899 [76 Cal.Rptr.3d 787, 183 P.3d 471], original italics.)

- “[T]he district court effectively required the jury to presume that the arrest *was* constitutionally lawful, and so not to consider facts concerning the basis for the arrest. Doing so removed critical factual questions that were within the jury’s province to decide. For instance, by taking from the jury the question whether [officer]’s arrest of [plaintiff] for resisting or obstructing a police officer was lawful, the district judge implied simultaneously that [plaintiff] was in fact resisting or failing to obey the police officer’s lawful instructions. Presuming such resistance could certainly have influenced the jury’s assessment of ‘the need for force,’ as well as its consideration of the other *Graham* factors, including ‘whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight. By erroneously granting judgment as a matter of law on [plaintiff]’s unlawful arrest claim, the district court impermissibly truncated the jury’s consideration of [plaintiff]’s excessive force claim.” (*Velazquez v. City of Long Beach* (9th Cir. 2015) 793 F.3d 1010, --, original italics.)
- “[P]rivate parties ordinarily are not subject to suit under section 1983, unless, sifting the circumstances of the particular case, the state has so significantly involved itself in the private conduct that the private parties may fairly be termed state actors. Among the factors considered are whether the state subsidized or heavily regulated the conduct, or compelled or encouraged the particular conduct, whether the private actor was performing a function which normally is performed exclusively by the state, and whether there was a symbiotic relationship rendering the conduct joint state action.” (*Robbins v. Hamburger Home for Girls* (1995) 32 Cal.App.4th 671, 683 [38 Cal.Rptr.2d 534], internal citations omitted.)
- “Private parties act under color of state law if they willfully participate in joint action with state officials to deprive others of constitutional rights. Private parties involved in such a conspiracy may be liable under section 1983.” (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir.1989) 865 F.2d 1539, 1540, internal citations omitted.)

### **Secondary Sources**

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 816, 819 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch.7-G, *Unruh Civil Rights Act*, ¶ 7:1526 et seq. (The Rutter Group)

3 Civil Rights Actions, Ch. 10, *Deprivation of Rights Under Color of State Law—Law Enforcement and Prosecution*, ¶¶ 10.00–10.03 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights*

*Statutes*, § 113.14 (Matthew Bender)

**3070. Disability Discrimination—Access Barriers to Public Facility—Construction-Related Accessibility Standards Act—Essential Factual Elements (Civ. Code, §§ 54.3, 55.56)**

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**[Name of defendant] is the owner of [a/an] [e.g., restaurant] named [name of business] that is open to the public. [Name of plaintiff] is a disabled person who [specify disability that creates accessibility problems].**

**[Name of plaintiff] claims that [he/she] was denied full and equal access to [name of defendant]’s business on a particular occasion because of physical barriers. To establish this claim, [name of plaintiff] must prove both of the following:**

- 1. That [name of defendant]’s business had barriers that violated construction-related accessibility standards in that [specify barriers]; and [either]**
- 2. [That [name of plaintiff] personally encountered the violation on a particular occasion.]**

**[or]**

**[That [name of plaintiff] was deterred from accessing [name of defendant]’s business on a particular occasion.]**

**[A violation that [name of plaintiff] personally encountered may be sufficient to cause a denial of full and equal access if [he/she] experienced difficulty, discomfort, or embarrassment because of the violation.]**

**[To prove that [name of plaintiff] was deterred from accessing [name of defendant]’s business on a particular occasion, [he/she] must prove both of the following:**

- 1. That [name of plaintiff] had actual knowledge of one or more violations that prevented or reasonably dissuaded [him/her] from accessing [name of defendant]’s business, which [name of plaintiff] intended to patronize on a particular occasion.**
- 2. That the violation(s) would have actually denied [name of plaintiff] full and equal access if [he/she] had tried to patronize [name of defendant]’s business on that particular occasion.]**

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*New December 2014; Revised December 2016*

**Directions for Use**

Use this instruction if a plaintiff seeks statutory damages based on a construction-related accessibility claim under the Disabled Persons Act (DPA) or the Unruh Civil Rights Act. (See Civ. Code, § 55.56(a).) Do not give this instruction if actual damages are sought. CACI No. 3067, *Unruh Civil Rights Act—Damages*, may be given for claims for actual damages under the Unruh Act and adapted for use under the

DPA.

The DPA provides disabled persons with rights of access to public facilities. (See Civ. Code, §§ 54, 54.1.) Under the DPA, a disabled person who encounters barriers to access at a public accommodation may recover minimum statutory damages for each particular occasion on which he or she was denied access. (Civ. Code, §§ 54.3, 55.56(ef).) However, the Construction Related Accessibility Standard Act (CRASA) requires that before statutory damages may be recovered, the disabled person either have personally encountered the violation on a particular occasion or have been deterred from accessing the facility on a particular occasion. (See Civ. Code, § 55.56(b).) Also, specified violations are deemed to be merely technical and are presumed to not cause a person difficulty, discomfort, or embarrassment for the purpose of an award of minimum statutory damages. (See Civ. Code, § 55.56(e).)

Give either or both options for element 2 depending on whether the plaintiff personally encountered the barrier or was deterred from patronizing the business because of awareness of the barrier. The next-to-last paragraph is explanatory of the first option, and the last paragraph is explanatory of the second option.

### Sources and Authority

- Disabled Persons Act: Right of Access to Public Facilities. Civil Code sections 54, 54.1.
- Action for Interference With Admittance to or Enjoyment of Public Facilities. Civil Code section 54.3.
- Construction-Related Accessibility Standard Act. Civil Code section 55.56.
- “Part 2.5 of division 1 of the Civil Code, currently consisting of sections 54 to 55.3, is commonly referred to as the “Disabled Persons Act,” although it has no official title. Sections 54 and 54.1 generally guarantee individuals with disabilities equal access to public places, buildings, facilities and services, as well as common carriers, housing and places of public accommodation, while section 54.3 specifies remedies for violations of these guarantees, including a private action for damages.” (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 674 fn. 8 [94 Cal.Rptr.3d 685, 208 P.3d 623].)
- “[L]egislation (applicable to claims filed on or after Jan. 1, 2009 ([Civ. Code,] § 55.57)) restricts the availability of statutory damages under sections 52 and 54.3, permitting their recovery only if an accessibility violation actually denied the plaintiff full and equal access, that is, only if ‘the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion’ (§ 55.56, subd. (b)). It also limits statutory damages to one assessment per occasion of access denial, rather than being based on the number of accessibility standards violated. (*Id.*, subd. (e).)” (*Munson, supra*, 46 Cal.4th at pp. 677–678.)
- “[S]ection 54.3 imposes the standing requirement that the plaintiff have suffered an actual denial of equal access before any suit for damages can be brought. ... [A] plaintiff cannot recover damages under section 54.3 unless the violation actually denied him or her access to some public

facility. [¶] Plaintiff's attempt to equate a denial of equal access with the presence of a violation of federal or state regulations would nullify the standing requirement of section 54.3, since any disabled person could sue for statutory damages whenever he or she encountered noncompliant facilities, regardless of whether that lack of compliance actually impaired the plaintiff's access to those facilities. Plaintiff's argument would thereby eliminate any distinction between a cause of action for equitable relief under section 55 and a cause of action for damages under section 54.3.' ” (*Reycraft v. Lee* (2009) 177 Cal.App.4th 1211, 1223 [99 Cal.Rptr.3d 746].)

- “Like the Unruh Civil Rights Act, the DPA incorporates the ADA to the extent that ‘A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.’ (Civ. Code, § 54, subd. (c).” (*Baughman v. Walt Disney World Co.* (2013) 217 Cal.App.4th 1438, 1446 [159 Cal.Rptr.3d 825].)

### ***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 957 et seq.

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.36 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, § 35.20 (Matthew Bender)



**3100. Financial Abuse—Essential Factual Elements (Welf. & Inst. Code, § 15610.30)**

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*[Name of plaintiff]* **claims that** *[[name of individual defendant]/ [and] [name of employer defendant]]* **violated the Elder Abuse and Dependent Adult Civil Protection Act by taking financial advantage of [him/her/[name of decedent]]. To establish this claim, [name of plaintiff] must prove that all of the following are more likely to be true than not true:**

1. **That** *[[name of individual defendant]/[name of employer defendant]'s employee]* *[insert one of the following:]*  
  
**[[took/hid/appropriated/obtained/ [or] retained] [name of plaintiff/decedent]'s property;]**  
  
*[or]*  
  
**[assisted in [taking/hiding/appropriating/obtaining/ [or] retaining] [name of plaintiff/decedent]'s property;]**
2. **That** *[name of plaintiff/decedent]* **was [65 years of age or older/a dependent adult] at the time of the conduct;**
3. **That** *[[name of individual defendant]/[name of employer defendant]'s employee]* **[[took/hid/appropriated/obtained/ [or] retained]/assisted in [taking/hiding/appropriating/obtaining/ [or] retaining]] the property [for a wrongful use/ [or] with the intent to defraud/ [or] by undue influence];**
4. **That** *[name of plaintiff/decedent]* **was harmed; and**
5. **That** *[[name of individual defendant]'s/[name of employer defendant]'s employee' s]* **conduct was a substantial factor in causing [name of plaintiff]'s harm.**

**[One way** *[name of plaintiff]* **can prove that** *[[name of individual defendant]/[name of employer defendant]'s employee]* **[took/hid/appropriated/obtained/ [or] retained] the property for a wrongful use is by proving that** *[[name of individual defendant]/[name of employer defendant]'s employee]* **knew or should have known that [his/her] conduct was likely to be harmful to [name of plaintiff/decedent].**

**[[[Name of individual defendant]/[Name of employer defendant]'s employee]** **[took/hid/appropriated/obtained/ [or] retained] the property if [name of plaintiff/decedent] was deprived of the property by an agreement, gift, will, [or] trust[, or] [specify other testamentary instrument] regardless of whether the property was held by [name of plaintiff/decedent] or by [his/her] representative.]**

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*New September 2003; Revised June 2005, October 2008, April 2009, June 2010, December 2013, June 2014*

### Directions for Use

This instruction may be given in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act by the victim of elder financial abuse, or by the survivors of the victim. If the victim is the plaintiff and is seeking damages for pain and suffering, see CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)* in the Damages series. Plaintiffs who are suing for their decedent's pain and suffering should also use CACI No. 3101, *Financial Abuse—Decedent's Pain and Suffering*.

If the individual responsible for the financial abuse is a defendant in the case, use “[name of individual defendant]” throughout. If only the individual's employer is a defendant, use “[name of employer defendant]'s employee” throughout.

To recover compensatory damages, attorney fees, and costs against the employer under a theory of vicarious liability, see instructions in the Vicarious Responsibility series (CACI No. 3700 et seq.).

If “for a wrongful use” is selected in element 3, give the next-to-last optional paragraph on appropriate facts. This is not the exclusive manner of proving wrongful conduct under the statute. (See Welf. & Inst. Code, § 15610.30(b).)

If “by undue influence” is selected in element 3, also give CACI No. 3117, *Financial Abuse—“Undue Influence” Explained*.

Include the last optional paragraph if the elder was deprived of a property right by an agreement, donative transfer, or testamentary bequest. (See Welf. & Inst. Code, § 15610.30(c).)

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

### Sources and Authority

- Abuse of Elder or Dependent Adult. Welfare and Institutions Code section 15610.07.
- “Dependent Adult” Defined. Welfare and Institutions Code section 15610.23.
- “Elder” Defined. Welfare and Institutions Code section 15610.27.
- “Financial Abuse” Defined. Welfare and Institutions Code section 15610.30.
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “The Legislature enacted the Act to protect elders by providing enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect. An elder is defined as ‘any person

residing in this state, 65 years of age or older.’ The proscribed conduct includes financial abuse. The financial abuse provisions are, in part, premised on the Legislature's belief that in addition to being subject to the general rules of contract, financial agreements entered into by elders should be subject to special scrutiny.” (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 478 [177 Cal.Rptr.3d 320], internal citations omitted.)

- ~~“The Act was expressly designed to protect elders and other dependent adults who ‘may be subjected to abuse, neglect, or abandonment ...’ Within the Act, two groups of persons who ordinarily assume responsibility for the ‘care and custody’ of the elderly are identified and defined: health practitioners and care custodians. A ‘health practitioner’ is defined in section 15610.37 as a ‘physician and surgeon, psychiatrist, psychologist, dentist, ...’ etc., who ‘treats an elder ... for any condition.’ ‘Care custodians,’ on the other hand, are administrators and employees of public and private institutions that provide ‘care or services for elders or dependent adults,’ including nursing homes, clinics, home health agencies, and similar facilities which house the elderly. The Legislature thus recognized that both classes of professionals—health practitioners as well as care custodians—should be charged with responsibility for the health, safety and welfare of elderly and dependent adults.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 974 [95 Cal.Rptr.2d 830], original italics, internal citations omitted.)~~
- “The probate court cited Welfare and Institutions Code section 15610.30 to impose financial elder abuse liability as to plaintiffs' first cause of action for fiduciary abuse of an elder. This liability is supported by the court's findings that ‘[decedent] did not know the extent of [defendant's] spending,’ and that ‘[w]hile it is not uncommon for a spouse to spend money or purchase items of which the other is unaware, and the line between such conduct and financial abuse is not always clear, what [defendant] did in this case went well beyond the line of reasonable conduct and constituted financial abuse,’ and the court's further conclusion that much of defendant's credit card spending and writing herself checks from decedent's bank account during the marriage amounted to financial abuse.” (*Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1356 [167 Cal.Rptr.3d 50].)
- “[T]he Legislature enacted the Act, including the provision prohibiting a taking by undue influence, to protect elderly individuals with limited or declining cognitive abilities from overreaching conduct that resulted in a deprivation of their property rights. To require the victim of financial elder abuse to wait to file suit until an agreement obtained through the statutorily proscribed conduct has been performed would not further that goal.” (*Bounds, supra*, 229 Cal.App.4th at p. 481.)
- “When the [operable pleading] was filed, former section 15610.30, subdivision (a)(3) referred to the definition of undue influence found in Civil Code section 1575. However, in 2013, the Legislature amended section 15610.30, subdivision (a)(3) to refer, instead, to a broader definition of undue influence found in the newly enacted section 15610.70.” (*Bounds, supra*, 229 Cal.App.4th at p. 479.)

### *Secondary Sources*

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

Balisok, [Civil Litigation Series: Elder Abuse Litigation](#), §§ 5:1 et seq., [7.2](#), 22:9–22:12 (The Rutter Group)

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 6.23, 6.30–6.34

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elders*, § 5.33[4] (Matthew Bender)

**3101. Financial Abuse—Decedent’s Pain and Suffering (Welf. & Inst. Code, § 15657.5)**

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**[Name of plaintiff] also seeks to recover damages for [name of decedent]’s pain and suffering. To recover these damages, [name of plaintiff] must also prove by clear and convincing evidence that [name of individual defendant/[name of employer defendant]’s employee] acted with [recklessness/oppression/fraud/ [or] malice] in committing the financial abuse.**

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*New September 2003; Revised June 2005, October 2008, April 2009*

**Directions for Use**

Give this instruction along with CACI No. 3100, *Financial Abuse—Essential Factual Elements*, if the plaintiff seeks survival damages for pain and suffering in addition to conventional tort damages and attorney fees and costs. (See Welf. & Inst. Code, § 15657.5.) Although one would not normally expect that financial abuse alone would lead to a wrongful death action, the Legislature has provided this remedy should the situation arise.

If the individual responsible for the neglect is a defendant in the case, use “[name of individual defendant].” If only the individual’s employer is a defendant, use “[name of employer defendant]’s employee.”

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

**Sources and Authority**

- Enhanced Remedies for Financial Abuse. Welfare and Institutions Code section 15657.5.
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve ‘intentional,’ ‘willful,’ or ‘conscious’ wrongdoing of a ‘despicable’ or ‘injurious’ nature. ‘Recklessness’ refers to a subjective state of culpability greater than simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high degree of probability’ that an injury will occur. Recklessness, unlike negligence, involves more than ‘inadvertence, incompetence, unskillfulness, or a failure to take precautions’ but rather rises to the level of a ‘conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.’ ” (*Delaney, supra*, 20 Cal.4th at pp. 31–32, internal citations omitted.)
- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons

from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], disapproved on other grounds in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 164 [202 Cal.Rptr.3d 447, 370 P.3d 1011], internal citations omitted.)

- “The effect of the 1991 amendment to the elder abuse law was to ... permit a decedent’s personal representative or successor to recover pain and suffering damages when plaintiff can prove by clear and convincing evidence recklessness, oppression, fraud, or malice in the commission of elder abuse. Even then, those damages would be subject to the \$250,000 cap placed by Civil Code section 3333.2, subdivision (b) for noneconomic damages against a health care provider. In this limited circumstance, the decedent’s right to pain and suffering damages would not die with him or her; the damages would be recoverable by a survivor.” (*ARA Living Centers—Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1563 [23 Cal.Rptr.2d 224].)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 8:5-8:7, 8:15 (The Rutter Group)

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 6.23, 6.30–6.34, 6.45–6.47

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.35 (Matthew Bender)

**3102A. Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants  
(Welf. & Inst. Code, §§ 15657, 15657.05; Civ. Code, § 3294(b))**

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[Name of plaintiff] also claims that [name of employer defendant] is responsible for [attorney fees and costs/ [and] [name of decedent]’s pain and suffering before death]. To establish this claim, [name of plaintiff] must prove by clear and convincing evidence [insert one or more of the following four options:]

1. [That [name of individual defendant] was an officer, a director, or a managing agent of [name of employer defendant] acting on behalf of [name of defendant];] [or]
2. [That an officer, a director, or a managing agent of [name of employer defendant] had advance knowledge of the unfitness of [name of individual defendant] and employed [him/her] with a knowing disregard of the rights or safety of others;] [or]
3. [That an officer, a director, or a managing agent of [name of employer defendant] authorized [name of individual defendant]’s conduct;] [or]
4. [That an officer, a director, or a managing agent of [name of employer defendant] knew of [name of individual defendant]’s wrongful conduct and adopted or approved the conduct after it occurred.]

An employee is a “managing agent” if he or she exercises substantial independent authority and judgment in his or her corporate decision-making such that his or her decisions ultimately determine corporate policy.

[If [name of plaintiff] proves the above, I will decide the amount of attorney fees and costs.]

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*Derived from former CACI No. 3102 October 2008; Revised April 2009*

**Directions for Use**

This instruction should be given with CACI No. 3104 (neglect), CACI No. 3107 (physical abuse), or CACI No. 3110 (abduction) if the plaintiff is seeking the enhanced remedies of attorney fees and costs and/or damages for a decedent’s pain and suffering against an employer and the employee is also a defendant. (See Civ. Code, § 3294(b); Welf. & Inst. Code, §§ 15657(c), 15657.05.) If the employer is the only defendant, give CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*. The requirements of Civil Code section 3294(b) need not be met in order to obtain enhanced remedies from an employer for financial abuse. (See Welf. & Inst. Code, § 15657.5(c).)

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

**Sources and Authority**

- Enhanced Remedies for Physical Abuse or Neglect. Welfare and Institutions Code section 15657.
- Enhanced Remedies Against Employer Based on Acts of Employee. Welfare and Institutions Code section 15657.5(c).
- Enhanced Remedies for Abduction. Welfare and Institutions Code section 15657.05.
- Punitive Damages Against Employer. Civil Code section 3294(b).
- “[A] finding of ratification of [agent’s] actions by [employer], and any other findings made under Civil Code section 3294, subdivision (b), must be made by clear and convincing evidence.” (*Barton v. Alexander Hamilton Life Ins. Co. of America* (2003) 110 Cal.App.4th 1640, 1644 [3 Cal.Rptr.3d 258].)
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve ‘intentional,’ ‘willful,’ or ‘conscious’ wrongdoing of a ‘despicable’ or ‘injurious’ nature. ‘Recklessness’ refers to a subjective state of culpability greater than simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high degree of probability’ that an injury will occur. Recklessness, unlike negligence, involves more than ‘inadvertence, incompetence, unskillfulness, or a failure to take precautions’ but rather rises to the level of a ‘conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.’ ” (*Delaney, supra*, 20 Cal.4th at pp. 31-32, internal citations omitted.)
- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], [disapproved on other grounds in \*Winn v. Pioneer Medical Group, Inc.\* \(2016\) 63 Cal.4th 148, 164 \[202 Cal.Rptr.3d 447, 370 P.3d 1011\]](#), internal citations omitted.)

### Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 9:1, 9:67, 10:1 \(The Rutter Group\)](#)

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 6.41–6.44



1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.35 (Matthew Bender)

**3102B. Employer Liability for Enhanced Remedies—Employer Defendant Only (Welf. & Inst. Code, §§ 15657, 15657.05; Civ. Code, § 3294(b))**

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[Name of plaintiff] also claims that [name of defendant] is responsible for [attorney fees and costs/ [and] [name of decedent]’s pain and suffering before death]. To establish this claim, [name of plaintiff] must prove by clear and convincing evidence [insert one or more of the following four options:]

1. [That the employee who committed the acts was an officer, a director, or a managing agent of [name of defendant] acting on behalf of [name of defendant]]; [or]
2. [That an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee who committed the acts and employed [him/her/] with a knowing disregard of the rights or safety of others;] [or]
3. [That an officer, a director, or a managing agent of [name of defendant] authorized the conduct of the employee who committed the acts;] [or]
4. [That an officer, a director, or a managing agent of [name of defendant] knew of the wrongful conduct of the employee who committed the acts and adopted or approved the conduct after it occurred.]

An employee is a “managing agent” if he or she exercises substantial independent authority and judgment in his or her corporate decision-making such that his or her decisions ultimately determine corporate policy.

[If [name of plaintiff] proves the above, I will decide the amount of attorney fees and costs.]

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*Derived from former CACI No. 3102 October 2008; Revised April 2009*

**Directions for Use**

This instruction should be given with CACI No. 3104 (neglect), CACI No. 3107 (physical abuse), or CACI No. 3110 (abduction) if the plaintiff is seeking the enhanced remedies of attorney fees and costs and/or damages for a decedent’s pain and suffering against an employer and the employee is not also a defendant. (See Civ. Code, § 3294(b); Welf. & Inst. Code, §§ 15657(c), 15677.05.) If the employee is also a defendant, give CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*. The requirements of Civil Code section 3294(b) need not be met in order to obtain enhanced remedies from an employer for financial abuse. (See Welf. & Inst. Code, § 15657.5(c).)

**Sources and Authority**

- Enhanced Remedies for Physical Abuse or Neglect. Welfare and Institutions Code section 15657.
- Enhanced Remedies Against Employer for Acts of Employee. Welfare and Institutions Code, section

15657.5(c).

- Enhanced Remedies for Abduction. Welfare and Institutions Code section 15657.05.
- Punitive Damages Against Employer. Civil Code section 3294(b).
- “[A] finding of ratification of [agent’s] actions by [employer], and any other findings made under Civil Code section 3294, subdivision (b), must be made by clear and convincing evidence.” (*Barton v. Alexander Hamilton Life Ins. Co. of America* (2003) 110 Cal.App.4th 1640, 1644 [3 Cal.Rptr.3d 258].)
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], [disapproved on other grounds in \*Winn v. Pioneer Medical Group, Inc.\* \(2016\) 63 Cal.4th 148, 164 \[202 Cal.Rptr.3d 447, 370 P.3d 1011\]](#), internal citations omitted.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 9:1, 9:67, 10:1 \(The Rutter Group\)](#)

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 6.41–6.44

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.35 (Matthew Bender)

**3104. Neglect—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657)**

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[Name of plaintiff] also seeks to recover [attorney fees and costs/ [and] damages for [name of decedent]’s pain and suffering]. To recover these remedies, [name of plaintiff] must prove all of the requirements for neglect by clear and convincing evidence, and must also prove by clear and convincing evidence that [[name of individual defendant]/[name of employer defendant]’s employee] acted with [recklessness/oppresion/fraud/ [or] malice] in neglecting [name of plaintiff/decedent].

[If [name of plaintiff] proves the above, I will decide the amount of attorney fees and costs.]

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New September 2003; Revised June 2005, October 2008

**Directions for Use**

Give this instruction along with CACI No. 3103, *Neglect—Essential Factual Elements*, if the plaintiff seeks the enhanced remedies of attorney fees and costs and damages for the decedent’s predeath pain and suffering. (See Welf. & Inst. Code, § 15657.)

If the individual responsible for the neglect is a defendant in the case, use “[name of individual defendant].” If only the individual’s employer is a defendant, use “[name of employer defendant]’s employee.”

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

**Sources and Authority**

- Enhanced Remedies for Neglect. Welfare and Institutions Code section 15657.
- “In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve ‘intentional,’ ‘willful,’ or ‘conscious’ wrongdoing of a ‘despicable’ or ‘injurious’ nature. [¶] ‘Recklessness’ refers to a subjective state of culpability greater than simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high degree of probability’ that an injury will occur. Recklessness, unlike negligence, involves more than ‘inadvertence, incompetence, unskillfulness, or a failure to take precautions’ but rather rises to the level of a ‘conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.’ ” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32 [82 Cal.Rptr.2d 610, 971 P.2d 986], internal citations omitted.)

- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], disapproved on other grounds in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 164 [202 Cal.Rptr.3d 447, 370 P.3d 1011], internal citations omitted.)
- “The effect of the 1991 amendment to the elder abuse law was to ... permit a decedent’s personal representative or successor to recover pain and suffering damages when plaintiff can prove by clear and convincing evidence recklessness, oppression, fraud, or malice in the commission of elder abuse. Even then, those damages would be subject to the \$250,000 cap placed by Civil Code section 3333.2, subdivision (b) for noneconomic damages against a health care provider. In this limited circumstance, the decedent’s right to pain and suffering damages would not die with him or her; the damages would be recoverable by a survivor.” (*ARA Living Centers—Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1563 [23 Cal.Rptr.2d 224].)
- “[I]f the neglect is ‘reckless[,]’ or done with ‘oppression, fraud or malice,’ then the action falls within the scope of section 15657 and as such cannot be considered simply ‘based on ... professional negligence’ within the meaning of section 15657.2. The use of such language in section 15657, and the explicit exclusion of ‘professional negligence’ in section 15657.2, make clear the Elder Abuse Act’s goal was to provide heightened remedies for, as stated in the legislative history, ‘acts of egregious abuse’ against elder and dependent adults, while allowing acts of negligence in the rendition of medical services to elder and dependent adults to be governed by laws specifically applicable to such negligence. That only these egregious acts were intended to be sanctioned under section 15657 is further underscored by the fact that the statute requires liability to be proved by a heightened ‘clear and convincing evidence’ standard.” (*Delaney, supra*, 20 Cal.4th at p. 35, internal citation omitted.)
- “[W]e distill several factors that must be present for conduct to constitute neglect within the meaning of the Elder Abuse Act and thereby trigger the enhanced remedies available under the Act. The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult’s basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness). The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 406–407 [129 Cal.Rptr.3d 895], internal citations omitted.)
- “‘Liability’ under section 15657 includes as an element ‘causation,’ which, as all elements of liability, must be proved by clear and convincing evidence for purposes of an award of attorney fees.” (*Perlin v. Fountain View Management, Inc.* (2008) 163 Cal.App.4th 657, 664 [77 Cal.Rptr.3d 743].)

- “We reject plaintiffs' argument that a violation of the Act does not constitute an independent cause of action. Accordingly, plaintiffs' failure to obtain a verdict establishing causation—one element of liability—by clear and convincing evidence, precludes an award of attorney fees.” (*Perlin, supra*, 163 Cal.App.4th at p. 666.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 9:1, 9:9, 9:11.1 \(The Rutter Group\)](#)

California Elder Law Litigation (Cont.Ed.Bar 2003) § 2.72

3 Levy et al., California Torts, Ch. 31 *Liability of Physicians and Other Medical Practitioners*, § 31.50[4][d] (Matthew Bender)

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.35 (Matthew Bender)

### 3106. Physical Abuse—Essential Factual Elements (Welf. & Inst. Code, § 15610.63)

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*[Name of plaintiff]* claims that *[he/she/[name of decedent]]* was physically abused by *[[name of individual defendant]/ [and] [name of employer defendant]]* in violation of the Elder Abuse and Dependent Adult Civil Protection Act. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[[name of individual defendant]/[name of employer defendant]’s employee]* physically abused *[name of plaintiff/decedent]* by *[insert applicable grounds for abuse]*;
  2. That *[name of plaintiff/decedent]* was **[65 years of age or older/a dependent adult]** at the time of the conduct;
  3. That *[name of plaintiff/decedent]* was harmed; and
  4. That *[[name of individual defendant]’s/[name of employer defendant]’s employee’s]* conduct was a substantial factor in causing *[name of plaintiff/decedent]’s* harm.
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*New September 2003; Revised December 2005, October 2008*

#### Directions for Use

This instruction may be given in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act by the victim of elder physical abuse, or by the survivors of the victim. If the victim is the plaintiff and is seeking damages for pain and suffering, see CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)* in the Damages series.

If the plaintiff seeks the enhanced remedies of attorney fees and costs, and in the case of a wrongful death, the decedent’s pain and suffering, give CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, in addition to this instruction. (See Welf. & Inst. Code, § 15657.)

If the individual responsible for the physical abuse is a defendant in the case, use “[*name of individual defendant*]” throughout. If only the individual’s employer is a defendant, use “[*name of employer defendant*]’s employee” throughout.

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give either CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*. To recover damages against the employer under a theory of vicarious liability, see instructions in the Vicarious Responsibility series (CACI No. 3700 et seq.).

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

### Sources and Authority

- “Elder Abuse” Defined. Welfare and Institutions Code section 15610.07.
- “Dependent Adult” Defined. Welfare and Institutions Code section 15610.23.
- “Elder” Defined. Welfare and Institutions Code section 15610.27.
- “Physical Abuse” Defined. Welfare and Institutions Code section 15610.63.
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- ~~“The Act was expressly designed to protect elders and other dependent adults who ‘may be subjected to abuse, neglect, or abandonment ...’ Within the Act, two groups of persons who ordinarily assume responsibility for the ‘care and custody’ of the elderly are identified and defined: health practitioners and care custodians. A ‘health practitioner’ is defined in section 15610.37 as a ‘physician and surgeon, psychiatrist, psychologist, dentist, ...’ etc., who ‘treats an elder ... for any condition.’ ‘Care custodians,’ on the other hand, are administrators and employees of public and private institutions that provide ‘care or services for elders or dependent adults,’ including nursing homes, clinics, home health agencies, and similar facilities which house the elderly. The Legislature thus recognized that both classes of professionals—health practitioners as well as care custodians—should be charged with responsibility for the health, safety and welfare of elderly and dependent adults.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 974 [95 Cal.Rptr.2d 830], original italics, internal citations omitted.)~~

### Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 1:1, 9:1, 19:1 \(The Rutter Group\)](#)

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 2.69, 2.71

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elders*, § 5.33[2] (Matthew Bender)



### 3107. Physical Abuse—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657)

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[*Name of plaintiff*] also seeks to recover [attorney fees and costs/ [and] damages for [*name of decedent*]'s pain and suffering]. To recover these remedies, [*name of plaintiff*] must prove all of the requirements for the physical abuse by clear and convincing evidence, and must also prove by clear and convincing evidence that [[*name of individual defendant*]/[*name of employer defendant*]'s employee] acted with [recklessness/oppression/fraud/ [or] malice] in physically abusing [*name of plaintiff*].

[If [*name of plaintiff*] proves the above, I will decide the amount of attorney fees and costs.]

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*New September 2003; Revised June 2005, October 2008*

#### Directions for Use

Give this instruction along with CACI No. 3106, *Physical Abuse—Essential Factual Elements*, if the plaintiff seeks the enhanced remedies of attorney fees and costs and damages for the decedent's predeath pain and suffering. (See Welf. & Inst. Code, § 15657.)

If the individual responsible for the physical abuse is a defendant in the case, use “[*name of individual defendant*].” If only the individual's employer is a defendant, use “[*name of employer defendant*]'s employee.”

If the plaintiff is seeking enhanced remedies against the individual's employer, also give CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

#### Sources and Authority

- Enhanced Remedies for Physical Abuse. Welfare and Institutions Code section 15657.
- “In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve ‘intentional,’ ‘willful,’ or ‘conscious’ wrongdoing of a ‘despicable’ or ‘injurious’ nature. [¶] ‘Recklessness’ refers to a subjective state of culpability greater than simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high degree of probability’ that an injury will occur. Recklessness, unlike negligence, involves more than ‘inadvertence, incompetence, unskillfulness, or a failure to take precautions’ but rather rises to the level of a ‘conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.’ ” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32 [82 Cal.Rptr.2d 610, 971 P.2d 986], internal citations omitted.)

- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], [disapproved on other grounds in \*Winn v. Pioneer Medical Group, Inc.\* \(2016\) 63 Cal.4th 148, 164 \[202 Cal.Rptr.3d 447, 370 P.3d 1011\]](#), internal citations omitted.)
- “The effect of the 1991 amendment to the elder abuse law was to ... permit a decedent’s personal representative or successor to recover pain and suffering damages when plaintiff can prove by clear and convincing evidence recklessness, oppression, fraud, or malice in the commission of elder abuse. Even then, those damages would be subject to the \$250,000 cap placed by Civil Code section 3333.2, subdivision (b) for noneconomic damages against a health care provider. In this limited circumstance, the decedent’s right to pain and suffering damages would not die with him or her; the damages would be recoverable by a survivor.” (*ARA Living Centers—Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1563 [23 Cal.Rptr.2d 224].)
- “[I]f the neglect is ‘reckless[,]’ or done with ‘oppression, fraud or malice,’ then the action falls within the scope of section 15657 and as such cannot be considered simply ‘based on ... professional negligence’ within the meaning of section 15657.2. The use of such language in section 15657, and the explicit exclusion of ‘professional negligence’ in section 15657.2, make clear the Elder Abuse Act’s goal was to provide heightened remedies for, as stated in the legislative history, ‘acts of egregious abuse’ against elder and dependent adults, while allowing acts of negligence in the rendition of medical services to elder and dependent adults to be governed by laws specifically applicable to such negligence. That only these egregious acts were intended to be sanctioned under section 15657 is further underscored by the fact that the statute requires liability to be proved by a heightened ‘clear and convincing evidence’ standard.” (*Delaney, supra*, 20 Cal.4th at p. 35, internal citation omitted.)
- “‘Liability’ under section 15657 includes as an element ‘causation,’ which, as all elements of liability, must be proved by clear and convincing evidence for purposes of an award of attorney fees.” (*Perlin v. Fountain View Management, Inc.* (2008) 163 Cal.App.4th 657, 664 [77 Cal.Rptr.3d 743].)
- “We reject plaintiffs’ argument that a violation of the Act does not constitute an independent cause of action. Accordingly, plaintiffs’ failure to obtain a verdict establishing causation—one element of liability—by clear and convincing evidence, precludes an award of attorney fees.” (*Perlin, supra*, 163 Cal.App.4th at p. 666.)

### ***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 9:1, 9:9, 9:28 \(The Rutter Group\)](#)

California Elder Law Litigation (Cont.Ed.Bar 2003) § 2.72

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.35 (Matthew Bender)



**3109. Abduction—Essential Factual Elements (Welf. & Inst. Code, § 15610.06)**

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*[Name of plaintiff]* **claims that** *[[name of individual defendant]/ [and] [name of employer defendant]]* **abducted [him/her/[name of decedent]] in violation of the Elder Abuse and Dependent Adult Civil Protection Act. To establish this claim, [name of plaintiff] must prove all of the following:**

1. **That** *[[name of individual defendant]/[name of employer defendant]]*'s **employee** **[removed [name of plaintiff/decedent] from California and] restrained [him/her/[name of decedent]] from returning to California;**
  2. **That** *[name of plaintiff/decedent]* **was [65 years of age or older/a dependent adult] at the time of the conduct;**
  3. **[That** *[name of plaintiff/decedent]* **did not have the capacity to consent to the [removal and] restraint;]**  
  
*[or]*  
  
**[That** *[[name of conservator]/the court]* **did not consent to the [removal and] restraint;]**
  4. **That** *[name of plaintiff/decedent]* **was harmed; and**
  5. **That** *[[name of individual defendant]'s/[name of employer defendant]'s employee's]* **conduct was a substantial factor in causing [name of plaintiff/decedent]'s harm.**
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*New September 2003; Revised December 2005, October 2008*

**Directions for Use**

This instruction may be given in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act by the victim of elder abduction, or by the survivors of the victim. If the victim is the plaintiff and is seeking damages for pain and suffering, see CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*, in the Damages series.

If the individual responsible for the abduction is a defendant in the case, use “[*name of individual defendant*]” throughout. If only the individual’s employer is a defendant, use “[*name of employer defendant*]’s employee” throughout.

If the plaintiff seeks the enhanced remedies of attorney fees and costs, and in the case of a wrongful death, the decedent’s pain and suffering, give CACI No. 3110, *Abduction—Enhanced Remedies Sought*. (See Welf. & Inst. Code, § 15657.05.)

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give either CACI No.

3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*. To recover damages against the employer under a theory of vicarious liability, see instructions in the Vicarious Responsibility series (CACI No. 3700 et seq.).

The instructions in this series are not intended to cover every circumstance under which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

### Sources and Authority

- “Abduction” Defined. Welfare and Institutions Code section 15610.06.
- “Elder Abuse” Defined. Welfare and Institutions Code section 15610.07.
- “Dependent Adult” Defined. Welfare and Institutions Code section 15610.23.
- “Elder” Defined. Welfare and Institutions Code section 15610.27.
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971-972 [95 Cal.Rptr.2d 830], [disapproved on other grounds in \*Winn v. Pioneer Medical Group, Inc.\* \(2016\) 63 Cal.4th 148, 164 \[202 Cal.Rptr.3d 447, 370 P.3d 1011\]](#), internal citations omitted.)
- “The effect of the 1991 amendment to the elder abuse law was to ... permit a decedent’s personal representative or successor to recover pain and suffering damages when plaintiff can prove by clear and convincing evidence recklessness, oppression, fraud, or malice in the commission of elder abuse. Even then, those damages would be subject to the \$250,000 cap placed by Civil Code section 3333.2, subdivision (b) for noneconomic damages against a health care provider. In this limited circumstance, the decedent’s right to pain and suffering damages would not die with him or her; the damages would be recoverable by a survivor.” (*ARA Living Centers—Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1563 [23 Cal.Rptr.2d 224].)

### Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 7:1, 7:3 \(The Rutter Group\)](#)

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elders*, § 5.33[5] (Matthew

Bender)

### 3110. Abduction—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657.05)

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[*Name of plaintiff*] also seeks to recover [attorney fees and costs/ [and] damages for [*name of decedent*]’s pain and suffering]. To recover these remedies, [*name of plaintiff*] must prove all of the requirements for the abduction by clear and convincing evidence.

[If [*name of plaintiff*] proves the above, I will decide the amount of attorney fees and costs.]

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*New September 2003; Revised December 2005, April 2008, October 2008*

#### Directions for Use

Give this instruction along with CACI No. 3109, *Abduction—Essential Factual Elements*, if the plaintiff seeks the enhanced remedies of attorney fees and costs and/or damages for the decedent’s predeath pain and suffering. (See Welf. & Inst. Code, § 15657.05.)

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

#### Sources and Authority

- Enhanced Remedies for Abduction. Welfare and Institutions Code section 15657.05.
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “As amended in 1991, the Elder Abuse Act was designed to protect elderly and dependent persons from abuse, neglect, or abandonment. In addition to adopting measures designed to encourage reporting of abuse and neglect, the Act authorizes the court to award attorney fees to the prevailing plaintiffs and allows survivors to recover pain and suffering damages in cases of intentional and reckless abuse where the elder has died.” (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 971–972 [95 Cal.Rptr.2d 830], [disapproved on other grounds in \*Winn v. Pioneer Medical Group, Inc.\* \(2016\) 63 Cal.4th 148, 164 \[202 Cal.Rptr.3d 447, 370 P.3d 1011\]](#), internal citations omitted.)
- “‘Liability’ under section 15657 includes as an element ‘causation,’ which, as all elements of liability, must be proved by clear and convincing evidence for purposes of an award of attorney fees.” (*Perlin v. Fountain View Management, Inc.* (2008) 163 Cal.App.4th 657, 664 [77 Cal.Rptr.3d 743].)
- “We reject plaintiffs’ argument that a violation of the Act does not constitute an independent cause of



action. Accordingly, plaintiffs' failure to obtain a verdict establishing causation—one element of liability—by clear and convincing evidence, precludes an award of attorney fees.” (*Perlin, supra*, 163 Cal.App.4th at p. 666.)

*Secondary Sources*

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

[Balisok, Civil Litigation Series: Elder Abuse Litigation §§ 7:1-7:3 \(The Rutter Group\)](#)

### 3113. “Recklessness” Explained

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**[[Name of individual defendant]/[Name of employer defendant]’s employee] acted with “recklessness” if [he/she] knew it was highly probable that [his/her] conduct would cause harm and [he/she] knowingly disregarded this risk.**

**“Recklessness” is more than just the failure to use reasonable care.**

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*New September 2003; Revised October 2008*

#### Directions for Use

If the individual responsible for the elder abuse is a defendant in the case, use “[name of individual defendant].” If only the individual’s employer is a defendant, use “[name of employer defendant]’s employee.”

#### Sources and Authority

- “ ‘Recklessness’ refers to a subjective state of culpability greater than simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high degree of probability’ that an injury will occur. Recklessness, unlike negligence, involves more than ‘inadvertence, incompetence, unskillfulness, or a failure to take precautions’ but rather rises to the level of a ‘conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.’ ” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32 [82 Cal.Rptr.2d 610, 971 P.2d 986], internal citations omitted.)
- *In Conservatorship of Gregory v. Beverly Enterprises, Inc.* (2000) 80 Cal.App.4th 514, 521 [95 Cal.Rptr.2d 336], the court found that the following instruction adequately defined “recklessness”: “[T]he term ‘recklessness’ requires that the defendant have knowledge of a high degree of probability that dangerous consequences will result from his or her conduct and acts with deliberate disregard of that probability or with a conscious disregard of the probable consequences. Recklessness requires conduct more culpable than mere negligence.” (*Conservatorship of Gregory* (2000) 80 Cal.App.4th 514, 521 [95 Cal.Rptr.2d 336].)
- “The trier of fact should decide whether a knowing pattern and practice of understaffing in violation of applicable regulations amounts to recklessness.” (*Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1349 [200 Cal.Rptr.3d 345].)
- “A jury may see knowingly flouting staffing regulations as part of a pattern and practice to cut costs, thereby endangering the facility’s elderly and dependent patients, as qualitatively different than simple negligence.” (*Fenimore, supra*, 245 Cal.App.4th at p. 1350.)
- Restatement Second of Torts, section 500, provides: “The actor’s conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not

only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.”

***Secondary Sources***

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elders*, § 5.33[1] (Matthew Bender)

[Balisok, Civil Litigation Series: Elder Abuse Litigation, §§ 9:1, 9:33, 9:33.1 \(The Rutter Group\)](#)

### 3116. “Fraud” Explained

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**“Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact with the intention of depriving [name of plaintiff/decedent] of property or of a legal right or otherwise to cause [name of plaintiff/decedent] injury.**

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*New September 2003; Revised October 2008*

#### Sources and Authority

- “Fraud” for Punitive Damages. Civil Code section 3294(c)(3).
- “Although neglect that is fraudulent may be sufficient to trigger the enhanced remedies available under the Elder Abuse Act, without detrimental reliance, there is no fraud.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 409 [129 Cal.Rptr.3d 895], internal citations omitted.)
- “Apart from recklessness, [plaintiffs] also alleged the [defendant] Hospital was liable for elder abuse remedies because it acted fraudulently. They alleged the Hospital concealed [decedent] 's fall from his family, knowing that the fall was an adverse event that would affect its Medicare funding. Unlike the allegations of recklessness in violating staffing regulations, we find these allegations of fraud insufficient. . . . There were no allegations explaining how such concealment harmed George or how he detrimentally relied on it.” (*Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1351 [200 Cal.Rptr.3d 345], internal citation omitted.)

#### Secondary Sources

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elders*, § 5.33[4] (Matthew Bender)

17 California Forms of Pleading and Practice, Ch. 215, *Duress, Menace, Fraud, Undue Influence, and Mistake*, § 215.70 (Matthew Bender)

[Balisok, Civil Litigation Series: Elder Abuse Litigation, § 9:43 \(The Rutter Group\)](#)

### 3500. Introductory Instruction

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**Public agencies such as the [name of condemnor] have the right to take private property for public use if they pay the owner just compensation.**

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*New September 2003*

#### Sources and Authority

- Constitutional Right of Eminent Domain. Article I, section 19, of the California Constitution.
- Just Compensation. The Fifth Amendment of the U.S. Constitution.
- Acquisition of Property for Public Use. Code of Civil Procedure section 1240.010.
- “The power of eminent domain arises as an inherent attribute of sovereignty that is necessary for government to exist. Properly exercised, the eminent domain power effects a compromise between the public good for which private land is taken, and the protection and indemnification of private citizens whose property is taken to advance that public good. The Fifth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, and California Constitution, article I, section 19 require this protection of private citizens’ property.” (Burbank-Glendale-Pasadena Airport Authority v. Hensler (2000) 83 Cal.App.4th 556, 561 [99 Cal.Rptr.2d 729], internal citation omitted.)
- “Our Constitution thus guarantees landowners the right to have a jury determine the amount of just compensation owed for a taking.” (City of Perris v. Stamper (2016) 1 Cal.5th 576, 593 [205 Cal.Rptr.3d 797, 376 P.3d 1221].)
- “ ‘An inverse condemnation action is an eminent domain proceeding initiated by the property owner rather than the condemner. The principles which affect the parties’ rights in an inverse condemnation suit are the same as those in an eminent domain action.’ ” (Customer Co. v. City of Sacramento (1995) 10 Cal.4th 368, 377, fn. 4 [41 Cal.Rptr.2d 658, 895 P.2d 900], internal citations omitted.)
- “The principle sought to be achieved by this concept ‘is to reimburse the owner for the property interest taken and to place the owner in as good a position pecuniarily as if the property had not been taken.’ ” (Redevelopment Agency of the City of Long Beach v. First Christian Church of Long Beach (1983) 140 Cal.App.3d 690, 705 [189 Cal.Rptr. 749], internal citation omitted, disapproved on other grounds in Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp. (1997) 16 Cal.4th 694, 720-721 [66 Cal.Rptr.2d 630, 941 P.2d 809].)
- “We have long held that this jury right applies only to determining the appropriate amount of compensation, not to any other issues that arise in the course of condemnation proceedings.” (City of Perris, supra, 1 Cal.5th at p. 593.)The only issue for the jury is valuation; all others are tried by the court. (People v. Ricciardi (1943) 23 Cal.2d 390, 402 [144 P.2d 799].)

- ~~“While article I, section 14 [now 19], of the California Constitution guarantees a jury trial in condemnation cases on the issue of the defendant’s damages, this is the only issue to be decided by the jury; all other issues of law or fact must be decided by the court.” (Pacific Gas & Electric Co. v. Peterson (1969) 270 Cal.App.2d 434, 438 [75 Cal.Rptr. 673], internal citations omitted.)“Although the measure of compensation that is ‘just’ for purposes of both the federal and state takings clause is often determined by the ‘fair market value’ of what has been lost, both federal and state takings cases uniformly recognize that the fair market value standard is not applicable in all circumstances and that there is no rigid or fixed standard that is appropriate in all settings.” (Property Reserve, Inc. v. Superior Court (2016) 1 Cal.5th 151, 203–204 [204 Cal.Rptr.3d 770, 375 P.3d 887].)~~

### **Secondary Sources**

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 1223, 1229

1 Condemnation Practice in California (Cont.Ed.Bar 3d ed.) § 4.1

1 Nichols on Eminent Domain, Ch. 1, *The Nature, Origin, Evolution and Characteristics of the Power*, §§ 1.1, 1.11 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 247, *Eminent Domain and Inverse Condemnation*, § 247.12 (Matthew Bender)

### 3501. “Fair Market Value” Explained

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**Just compensation includes the fair market value of the property as of [insert date of valuation]. Fair market value is the highest price for the property that a willing buyer would have paid in cash to a willing seller, assuming that:**

- 1. There is no pressure on either one to buy or sell; and**
  - 2. The buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.**
- 

*New September 2003; Revised June 2015*

#### Directions for Use

Do not give this instruction if there is no relevant market for the property. Instead, instruct on the appropriate alternative method of valuation.

The jury determines the fair market value of the property based on the highest and best use for which the property is geographically and economically adaptable. (See *San Diego Gas & Electric Co. v. Schmidt* (2014) 228 Cal.App.4th 1280, 1288 [175 Cal.Rptr.3d 858].) If the highest and best use is disputed, give CACI No. 3502, “*Highest and Best Use*” Explained.

#### Sources and Authority

- “Fair Market Value” Defined. Code of Civil Procedure section 1263.320.
- “The measure of compensation in a condemnation case ‘is the fair market value of the property taken.’ ‘The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.’ ‘A jury should consider all those factors, including lawful legislative and administrative restrictions on property, which a buyer would take into consideration in arriving at the fair market value.’ ” (*City of Perris v. Stamper* (2016) 1 Cal.5th 576, 598–599 [205 Cal.Rptr.3d 797, 376 P.3d 1221].)
- “ ‘Market value,’ in turn, traditionally has been defined as ‘the highest price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable.’ ” (*Klopping v. City of Whittier* (1972) 8 Cal.3d 39, 43 [104 Cal.Rptr. 1, 500 P.2d 1345], internal citation omitted.)
- “Recognized alternatives to the market data approach to valuation are reproduction or replacement

costs less depreciation or obsolescence.” (*Redevelopment Agency of the City of Long Beach v. First Christian Church of Long Beach* (1983) 140 Cal.App.3d 690, 698 [189 Cal.Rptr. 749], internal citation omitted, disapproved on other grounds in *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 720-721 [66 Cal.Rptr.2d 630, 941 P.2d 809].)

- Alternative methods of valuation particularly apply to properties such as schools, churches, cemeteries, parks, and utilities for which there is no relevant market; therefore these properties may be valued on any basis that is just and equitable. (*County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1060 [20 Cal.Rptr.2d 675].)
- “[T]he fair market value of property taken has not been limited to the value of the property as used at the time of the taking, but has long taken into account the ‘highest and most profitable use to which the property might be put in the reasonable near future, to the extent that the probability of such a prospective use affects the market value.’ ” (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 744 [25 Cal.Rptr.2d 480, 863 P.2d 725], internal citations omitted.)
- “In condemnation actions, California courts have long recognized what has been referred to as the ‘appraisal trinity.’ This term encompasses three methods or approaches used by appraisers to determine the fair market value of real estate: (1) the current cost of reproducing (or replacing) the property less depreciation from all sources; (2) the ‘market data’ value as indicated by recent sale of comparable properties; and (3) the ‘income approach,’ or the value of which the property’s net earning power will support based upon the capitalization of net income. In 1965, the state Legislature codified these three approaches in Evidence Code section 815-820. A qualified appraiser in an eminent domain proceeding may use one or more of these valuation techniques to ascertain the fair market value of the condemned property.” (*Redevelopment Agency of the City of Long Beach, supra*, 140 Cal.App.3d at p. 705, internal citations omitted.)

### **Secondary Sources**

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, § 1230

1 Condemnation Practice in California (Cont.Ed.Bar 3d ed.) §§ 4.1-4.2

4 Nichols on Eminent Domain, Ch. 12, *Valuation Generally*, §§ 12.01-12.05, Ch. 13, *Fair Market Value-Physical Character*, § 13.01 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 247, *Eminent Domain and Inverse Condemnation*, § 247.135 (Matthew Bender)



### 3700. Introduction to Vicarious Responsibility

---

[One may authorize another to act on his or her behalf in transactions with third persons. This relationship is called “agency.” The person giving the authority is called the “principal”; the person to whom authority is given is called the “agent.”]

[An employer/A principal] is responsible for harm caused by the wrongful conduct of [his/her/its] [employees/agents] while acting within the scope of their [employment/authority].

[An [employee/agent] is always responsible for harm caused by [his/her/its] own wrongful conduct, whether or not the [employer/principal] is also liable.]

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*New September 2003; Revised June 2015*

#### Directions for Use

This instruction provides the jury with some basic background information about the doctrine of respondeat superior. Include the first paragraph if the relationship at issue is one of principal-agent. If the employee or agent is also a defendant, give the third paragraph.

This instruction should be followed by either CACI No. 3703, *Legal Relationship Not Disputed*, CACI No. 3704, *Existence of “Employee” Status Disputed*, or CACI No. 3705, *Existence of “Agency” Relationship Disputed*.

#### Sources and Authority

- “Agency” Defined. Civil Code section 2295.
- Principal’s Responsibility for Acts of Agent. Civil Code section 2338.
- “Agency is the relation that results from the act of one person, called the principal, who authorizes another, called the agent, to conduct one or more transactions with one or more third persons and to exercise a degree of discretion in effecting the purpose of the principal.” (*L. Byron Culver & Associates v. Jaoudi Industrial & Trading Corp.* (1991) 1 Cal.App.4th 300, 304 [1 Cal.Rptr.2d 680].)
- “ ‘ ‘An agent ‘is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and on account of the latter, and to render an account of such transactions.’ [Citation.] ‘The chief characteristic of the agency is that of representation, the authority to act for and in the place of the principal for the purpose of bringing him or her into legal relations with third parties. [Citations.]’ [Citation.] ‘The significant test of an agency relationship is the principal's right to control the activities of the agent.’ ” ’ ” (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1171–1172 [201 Cal.Rptr.3d 390].)
- “Under the doctrine of respondeat superior, an employer is vicariously liable for his employee's torts

committed within the scope of the employment. This doctrine is based on “ ‘a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business.’ ” (Perez v. Van Groningen & Sons, Inc. (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106, 719 P.2d 676].)

- “ ‘[A] principal is liable to third parties ... for the frauds or other wrongful acts committed by [its] agent in and as a part of the transaction of’ the business of the agency.” (Daniels, supra, 246 Cal.App.4th at p. 1172.)
- “[U]nder the Tort Claims Act, public employees are liable for injuries caused by their acts and omissions to the same extent as private persons. Vicarious liability is a primary basis for liability on the part of a public entity, and flows from the responsibility of such an entity for the acts of its employees under the principle of respondeat superior. As the Act provides, ‘[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would ... have given rise to a cause of action against that employee,’ unless ‘the employee is immune from liability.’ (Gov. Code, § 815.2, subs. (a), (b).)” (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1128 [119 Cal.Rptr.2d 709, 45 P.3d 1171], internal citations omitted.)
- “[W]here the liability of an employer in tort rests solely on the doctrine of respondeat superior, a judgment on the merits in favor of the employee is a bar to an action against the employer ... .” (Hilts v. County of Solano (1968) 265 Cal.App.2d 161, 176 [71 Cal.Rptr. 275].)
- “An agent or employee is always liable for his own torts, whether his employer is liable or not.” (Fleet v. Bank of America N.A. (2014) 229 Cal.App.4th 1403, 1411 [178 Cal.Rptr.3d 18].)

### Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 163–168

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, §§ 8.03-8.04 (Matthew Bender)

2 California Employment Law, Ch. 30, *Employers’ Tort Liability to Third Parties for Conduct of Employees*, § 30.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer’s Liability for Employee’s Torts*, § 248.11 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.14 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.24A (Matthew Bender)

1 California Civil Practice: Torts, §§ 3:1–3:4 (Thomson Reuters)

### 3701. Tort Liability Asserted Against Principal—Essential Factual Elements

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[Name of plaintiff] claims that [he/she] was harmed by [name of agent]’s [insert tort theory, e.g., “negligence”].

[Name of plaintiff] also claims that [name of defendant] is responsible for the harm because [name of agent] was acting as [his/her/its] [agent/employee/[insert other relationship, e.g., “partner”]] when the incident occurred.

If you find that [name of agent]’s [insert tort theory] harmed [name of plaintiff], then you must decide whether [name of defendant] is responsible for the harm. [Name of defendant] is responsible if [name of plaintiff] proves both of the following:

1. That [name of agent] was [name of defendant]’s [agent/employee/[insert other relationship]]; and
  2. That [name of agent] was acting within the scope of [his/her] [agency/employment/[insert other relationship]] when [he/she] harmed [name of plaintiff].
- 

New September 2003

#### Directions for Use

The term “name of agent,” in brackets, is intended in the general sense, to denote the person or entity whose wrongful conduct is alleged to have created the principal’s liability.

Under other principles of law, a principal may be directly liable for authorizing or directing an agent’s wrongful acts. (See 2 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 163.)

One of the two bracketed first sentences would be used, depending on whether the plaintiff is suing both the principal and the agent or the principal alone.

If there is no issue regarding whether a principal-agent exists, see CACI No. 3703, *Legal Relationship Not Disputed*.

This instruction may not apply ~~where-if~~ employer liability is statutory, such as under the Fair Employment and Housing Act.

#### Sources and Authority

- “Agent” Defined. Civil Code section 2295.
- “The rule of respondeat superior is familiar and simply stated: an employer is vicariously liable for

the torts of its employees committed within the scope of the employment. Equally well established, if somewhat surprising on first encounter, is the principle that an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297 [48 Cal.Rptr.2d 510, 907 P.2d 358], internal citations and footnote omitted.)

- "It is a settled rule of the law of agency that a principal is responsible to third persons for the ordinary contracts and obligations of his agent with third persons made in the course of the business of the agency and within the scope of the agent's powers as such, although made in the name of the agent and not purporting to be other than his own personal obligation or contract." (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1178 [201 Cal.Rptr.3d 390].)
- "The employer is liable not because the employer has control over the employee or is in some way at fault, but because the employer's enterprise creates inevitable risks as a part of doing business." (*Bailey v. Filco, Inc.* (1996) 48 Cal.App.4th 1552, 1559 [56 Cal.Rptr.2d 333], internal citations omitted.)
- "Respondeat superior is based on a 'deeply rooted sentiment' that it would be unjust for an enterprise to disclaim responsibility for injuries occurring in the course of its characteristic activities." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208 [285 Cal.Rptr. 99, 814 P.2d 1341], internal citation omitted.)
- The Supreme Court has articulated three reasons for applying the doctrine of respondeat superior: "(1) to prevent recurrence of the tortious conduct; (2) to give greater assurance of compensation for the victim; and (3) to ensure that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury." (*Mary M.*, *supra*, 54 Cal.3d at p. 209.)
- "[A] principal may be liable for the wrongful conduct of its agent, even if that conduct is criminal, in one of three ways: (1) if the 'principal directly authorizes ... [the tort or] crime to be committed'"; (2) if the agent commits the tort 'in the scope of his employment and in performing service on behalf of the principal', 'regardless of whether the wrong is authorized or ratified by [the principal];, and even if the wrong is criminal; or (3) if the principal ratifies its agent's conduct 'after the fact by ... voluntar[ily] elect[ing] to adopt the [agent's] conduct ... as its own' " (*Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953, 969 [202 Cal.Rptr.3d 414], internal citations omitted.)
- "[W]here recovery of damages is sought against a principal and an agent, and the negligence of the agent is the cause of the injury, a verdict releasing the agent from liability releases the principal." (*Lehmuth v. Long Beach Unified School Dist.* (1960) 53 Cal.2d 544, 550 [2 Cal.Rptr. 279, 348 P.2d 887].)
- The doctrine of respondeat superior applies equally to public and private employers. (*Mary M.*, *supra*, 54 Cal.3d at p. 209.)

### Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 163–168

Haning, et al., California Practice Guide: Personal Injury, Ch. 2(II)-A, Theories of Recovery--Vicarious Liability, ¶ 2:600 et seq. (The Rutter Group)

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, §§ 8.03-8.04 (Matthew Bender)

2 California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.14 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.22 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.20 et seq. (Matthew Bender)

1 California Civil Practice: Torts, §§ 3:1–3:4 (Thomson Reuters)

### 3704. Existence of “Employee” Status Disputed

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

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

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

- (a) *[Name of defendant]* supplied the equipment, tools, and place of work;
  - (b) *[Name of agent]* was paid by the hour rather than by the job;
  - (c) *[Name of defendant]* was in business;
  - (d) The work being done by *[name of agent]* was part of the regular business of *[name of defendant]*;
  - (e) *[Name of agent]* was not engaged in a distinct occupation or business;
  - (f) The kind of work performed by *[name of agent]* is usually done under the direction of a supervisor rather than by a specialist working without supervision;
  - (g) The kind of work performed by *[name of agent]* does not require specialized or professional skill;
  - (h) The services performed by *[name of agent]* were to be performed over a long period of time; [and]
  - (i) *[Name of defendant]* and *[name of agent]* believed that they had an employer-employee relationship[./; and]
  - (j) *[Specify other factor]*.
- 

*New September 2003; Revised December 2010, June 2015, December 2015*

### Directions for Use

This instruction is primarily intended for employer-employee relationships. Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of “Agency” Relationship Disputed*.

Secondary factors (a)–(i) come from the Restatement Second of Agency, section 220. (See also *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 532 [173 Cal.Rptr.3d 332, 327 P.3d 165]; Rest.3d Agency, § 7.07, com. f.) They have been phrased so that a yes answer points toward an employment relationship. Omit any that are not relevant. Additional factors have been endorsed by the California Supreme Court and may be included if applicable. (See *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399].) Therefore, an “other” option (j) has been included.

### Sources and Authority

- Principal-Agent Relationship. Civil Code section 2295.
- Rebuttable Presumption that Contractor is Employee Rather than Independent Contractor; Proof of Independent Contractor Status. Labor Code section 2750.5.
- “[S]ubject to certain policy considerations, a hirer ... cannot be held vicariously liable for the negligence of his independent contractors.” (*Blackwell v. Vasilas* (2016) 244 Cal.App.4th 160, 168 [197 Cal.Rptr.3d 753].)
- “Whether a common law employer-employee relationship exists turns foremost on the degree of a hirer’s right to control how the end result is achieved.” (*Ayala, supra*, 59 Cal.4th at p. 528.)
- “However, the courts have long recognized that the ‘control’ test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While conceding that the right to control work details is the ‘most important’ or ‘most significant’ consideration, the authorities also endorse several ‘secondary’ indicia of the nature of a service relationship.” (*S. G. Borello & Sons, Inc., supra*, 48 Cal.3d at p. 350, internal citations omitted.)
- “While the extent of the hirer’s right to control the work is the foremost consideration in assessing whether a common law employer-employee relationship exists, our precedents also recognize a range of secondary indicia drawn from the Second and Third Restatements of Agency that may in a given case evince an employment relationship. Courts may consider ‘(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.’ ”

(*Ayala, supra*, 59 Cal.4th at p. 532.)

- “ ‘Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.’ ” (*S. G. Borello & Sons, Inc., supra*, 48 Cal.3d at p. 351, internal citations omitted.)
- “[T]he Restatement guidelines heretofore approved in our state remain a useful reference.” (*S. G. Borello & Sons, Inc., supra*, 48 Cal.3d at p. 354.)
- “We also note the six-factor test developed by other jurisdictions which determine independent contractorship in light of the remedial purposes of the legislation. Besides the ‘right to control the work,’ the factors include (1) the alleged employee’s opportunity for profit or loss depending on his managerial skill; (2) the alleged employee’s investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer’s business. [¶] As can be seen, there are many points of individual similarity between these guidelines and our own traditional Restatement tests. We find that all are logically pertinent to the inherently difficult determination whether a provider of service is an employee or an excluded independent contractor for purposes of workers’ compensation law.” (*S. G. Borello & Sons, Inc., supra*, 48 Cal.3d at pp. 354–355, internal cross-reference omitted.)
- “Whether a person is an independent contractor or an employee is a question of fact if dependent upon the resolution of disputed evidence or inferences.” (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 297, fn. 4 [111 Cal.Rptr.3d 787].)
- The burden of proving the existence of an agency rests on the one affirming its existence. (*Burbank v. National Casualty Co.* (1941) 43 Cal.App.2d 773, 781 [111 P.2d 740].)
- “The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.” (*S. G. Borello & Sons, Inc., supra*, 48 Cal.3d at p. 342.)
- “It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship.” (*Malloy v. Fong* (1951) 37 Cal.2d 356, 370 [232 P.2d 241], internal citations omitted.)
- “Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because ‘[t]he power of the principal to terminate the services of the agent gives him the means of controlling the agent’s activities.’ ” (*Ayala, supra*, 59 Cal.4th at p. 531.)
- “The worker’s corresponding right to leave is similarly relevant: ‘ “An employee may quit, but an independent contractor is legally obligated to complete his contract.” ’ ” (*Ayala, supra*, 59 Cal.4th at p. 531 fn. 2.)
- “A finding of employment is supported where the workers are ‘a regular and integrated portion of [the] business operation.’ ” (*Garcia v. Seacon Logix Inc.* (2015) 238 Cal.App.4th 1476, 1487 [190



Cal.Rptr.3d 400].)

- “Where workers are paid weekly or by the hour, rather than by the job, it suggests an employment relationship.” (*Garcia, supra*, 238 Cal.App.4th at p. 1488.)
- “In cases where there is a written contract, to answer that question [the right of control] without full examination of the contract will be virtually impossible. ... [¶] ... [T]he rights spelled out in a contract may not be conclusive if other evidence demonstrates a practical allocation of rights at odds with the written terms.” (*Ayala, supra*, 59 Cal.4th at p. 535.)
- “[T]he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires only in the result of the work, and not the means by which it is achieved.” (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179 [183 Cal.Rptr.3d 394].)
- “ “[T]he owner may retain a broad general power of supervision and control as to the results of the work so as to insure satisfactory performance of the independent contract—including the right to inspect [citation], ... the right to make suggestions or recommendations as to details of the work [citation], the right to prescribe alterations or deviations in the work [citation]—without changing the relationship from that of owner and independent contractor ... .’ ” (*Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143 [159 Cal.Rptr.3d 102], quoting *McDonald v. Shell Oil Co.* (1955) 44 Cal.2d 785, 790 [285 P.2d 902].)
- “Agency and independent contractorship are not *necessarily* mutually exclusive legal categories as independent contractor and servant or employee are. In other words, an agent may also be an independent contractor. One who contracts to act on behalf of another and subject to the other's control, except with respect to his physical conduct, is both an agent and an independent contractor.” (*Jackson, supra*, 233 Cal.App.4th at p. 1184, original italics, internal citations omitted].)
- “[W]hen a statute refers to an ‘employee’ without defining the term, courts have generally applied the common law test of employment to that statute.” (*Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 586 [135 Cal.Rptr.3d 213].)
- “[A] termination at-will clause for both parties may properly be included in an independent contractor agreement, and is not by itself a basis for changing that relationship to one of an employee.” (*Arnold, supra*, 202 Cal.App.4th at p. 589.)
- Restatement Second of Agency, section 220, provides:
  - (1) A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.
  - (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:
    - (a) the extent of control which, by the agreement, the master may exercise over the details of the work;

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

***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 2–42

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

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

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

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

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.41 et seq. (Matthew Bender)

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

### 3722. Scope of Employment—Unauthorized Acts

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**An employee’s unauthorized conduct may be within the scope of [employment/authorization] if [the conduct was committed in the course of a series of acts authorized by the employer] [or] [the conduct arose from a risk inherent in or created by the enterprise].**

**[An employee’s wrongful or criminal conduct may be within the scope of employment even if it breaks a company rule or does not benefit the employer.]**

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*New September 2003*

#### Sources and Authority

- “[T]he employer’s liability extends beyond his actual or possible control of the employee to include risks inherent in or created by the enterprise.” (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968 [227 Cal.Rptr. 106, 719 P.2d 676].)
- “The fact that an employee is not engaged in the ultimate object of his employment at the time of his wrongful act does not preclude attribution of liability to an employer. ... [T]he proper inquiry is not whether the wrongful act itself was authorized but whether it was committed in the course of a series of acts of the agent which were authorized by the principal.” (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 219 [285 Cal.Rptr. 99, 814 P.2d 1341], internal citations omitted.)
- “Tortious conduct that violates an employee’s official duties or disregards the employer’s express orders may nonetheless be within the scope of employment. So may acts that do not benefit the employer, or are willful or malicious in nature.” (*Mary M., supra*, 54 Cal.3d at p. 209, internal citations omitted.)
- “Equally well established, if somewhat surprising on first encounter, ... that an employee’s willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts.” (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297 [48 Cal.Rptr.2d 510, 907 P.2d 358], internal citations omitted.)
- “California no longer follows the traditional rule that an employee's actions are within the scope of employment only if motivated, in whole or part, by a desire to serve the employer's interests. ... [¶] *‘It is sufficient ... if the injury resulted from a dispute arising out of the employment. ... ‘It is not necessary that the assault should have been made ‘as a means, or for the purpose of performing the work he (the employee) was employed to do.’ ’ ’ ’*” (*Lisa M., supra*, 12 Cal.4th at p. 297, original italics, internal citations omitted.)
- “Although an employee's willful, malicious, and even criminal torts may fall within the scope of employment, ‘an employer is not strictly liable for all actions of its employees during working hours.’ For the employer to be liable for an intentional tort, the employee's act must have a ‘causal nexus to

the employee's work.' Courts have used various terms to describe this causal nexus: the incident leading to the injury must be an ' "outgrowth" ' of the employment; the risk of tortious injury must be ' "inherent in the working environment" ' ; the risk must be ' "typical" ' or ' "broadly incidental" ' to the employer's business; the tort was ' "a generally foreseeable consequence" ' of the employer's business.' ( *Montague v. AMN Healthcare, Inc.* (2014) 223 Cal.App.4th 1515, 1521 [168 Cal.Rptr.3d 123], internal citations omitted.)

- "The question, then, is whether an employee's physical eruption, stemming from his interaction with a customer, is a predictable risk of retail employment. Our Supreme Court has suggested it may well be: 'Flare-ups, frustrations, and disagreements among employees are commonplace in the workplace and may lead to "physical act[s] of aggression." In bringing [people] together, work brings [personal] qualities together, causes frictions between them, creates occasions for lapses into carelessness, and for fun-making and emotional flareup. ... These expressions of human nature are incidents inseparable from working together. They involve risks of injury and these risks are inherent in the working environment.' " ( *Flores v. AutoZone West, Inc.* (2008) 161 Cal.App.4th 373, 381 [74 Cal.Rptr.3d 178], internal citations omitted.)
- "Sexual assaults are not per se beyond the scope of employment. But courts have rarely held an employee's sexual assault or sexual harassment of a third party falls within the scope of employment." ( *Daza v. Los Angeles Community College Dist.* (2016) 247 Cal.App.4th 260, 268 [-- Cal.Rptr.3d --], internal citations omitted.)

### Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 185–190

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.03[3][d], [f] (Matthew Bender)

2 California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.05 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.16 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.22 (Matthew Bender)

1 California Civil Practice: Torts §§ 3:11–3:12 (Thomson Reuters)

### 3903F. Damage to Real Property (Economic Damage)

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[Insert number, e.g., “6.”] The harm to [name of plaintiff]’s property.

To recover damages for harm to property, [name of plaintiff] must prove [the reduction in the property’s value/ or] the reasonable cost of repairing the harm]. [If there is evidence of both, [name of plaintiff] is entitled to the lesser of the two amounts. [However, if [name of plaintiff] has a genuine desire to repair the property for personal reasons, and if the costs of repair are reasonable given the damage to the property and the value after repair, then the costs of repair may be awarded even if they exceed the property’s loss of value.]]

[To determine the reduction in value, you must determine the fair market value of the property before the harm occurred and then subtract the fair market value of the property immediately after the harm occurred. The difference is the reduction of value.

“Fair market value” is the highest price for the property that a willing buyer would have paid to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.]

[To determine whether the cost of repairing the harm is reasonable, you must decide if there is a reasonable relationship between the cost of repair and the harm caused by [name of defendant]’s conduct. You must consider the expense and time involved to restore the property to its original condition compared to the value of the property [and [insert other applicable factors.]].

If you find that the cost of repairing the harm is not reasonable, then you may award any reduction in the property’s value.]

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*New September 2003; Revised April 2008, April 2009*

#### Directions for Use

Give this instruction for damages to real property caused by trespass, permanent nuisance, or other tortious conduct. See also CACI No. 3903G, *Loss of Use of Real Property (Economic Damage)*.

If there is evidence of both diminution in value and cost of repair, include all optional paragraphs. However, include the last bracketed sentence in the first paragraph only if the judge has determined that the claimed personal reasons are legally sufficient to justify the costs of repair.

If only the cost of repair is at issue, give just the first paragraph. However, if the reasonableness of the

cost of repair is at issue, then the value of the property must be considered, and all paragraphs must be included. If only diminution of value is at issue, omit the last two optional paragraphs.

### Sources and Authority

- Damages for Wrongful Occupation of Real Property. Civil Code section 3334(a).
- “The measure of damages for tortious injury to property, including trees, ‘is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.’ ‘Such damages are generally determined as the difference between the value of the property before and after the injury.’ But ‘[d]iminution in market value ... is not an absolute limitation; several other theories are available to fix appropriate compensation for the plaintiff’s loss.’ ‘“There is no fixed, inflexible rule for determining the measure of damages for injury to, or destruction of, property; whatever formula is most appropriate to compensate the injured party for the loss sustained in the particular case, will be adopted.”’ One such alternative measure of damages is the cost of restoring the property to its condition prior to the injury, and a plaintiff may recover these costs even if they exceed diminution in value if there is a ‘personal reason’ for restoration.” (Salazar v. Matejcek (2016) 245 Cal.App.4th 634, 643–644 [199 Cal.Rptr.3d 705], internal citations omitted.)
- “For tortious injury to real property, the general rule is that the plaintiff may recover the lesser of (1) the diminution in the property’s fair market value, as measured immediately before and immediately after the damage; or (2) the cost to repair the damage and restore the property to its pretrespass condition, plus the value of any lost use. The practical effect of this rule is to limit damages to property to the fair market value of the property prior to the damage.” (*Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 450 [102 Cal.Rptr.3d 32].)
- ~~“Diminution in market value ... is not an absolute limitation; several other theories are available to fix appropriate compensation for the plaintiff’s loss. ‘There is no fixed, inflexible rule for determining the measure of damages for injury to, or destruction of, property; whatever formula is most appropriate to compensate the injured party for the loss sustained in the particular case will be adopted.’” (*Heninger v. Dunn* (1980) 101 Cal.App.3d 858, 862 [162 Cal.Rptr. 104].)~~
- “Defendant ... contends that the trial court awarded excessive damages, on the ground that when the cost of restoration is less than the depreciation in value, the former is the measure of damages. This contention cannot be sustained. Plaintiffs established their damages by showing the depreciation in value. It was then incumbent upon defendants to come forward with proof that the cost of restoration would be less.” (*Herzog v. Grosso* (1953) 41 Cal.2d 219, 226 [259 P.2d 429], internal citations omitted.)
- “Where a plaintiff establishes damages by showing depreciation in the value of real property, courts have held defendants to the burden of coming forward with proof that cost of restoration would be less. It follows that when a plaintiff proves damages by showing the cost of repairs it should be incumbent on the defendant to introduce evidence that the repair costs exceed the value of the property.” (*Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905 [267 Cal.Rptr. 399], internal citations omitted.)

- “The ‘fair market value’ of real property is ‘the best price obtainable from a purchaser on a cash sale.’ It ‘is measured by the highest price the property would command if offered for sale in the open market with a reasonable time allowed to the seller to find a purchaser who will buy with a knowledge of all the uses to which it may be put.’ ” (*CMSH Co. v. Antelope Development, Inc.* (1990) 223 Cal.App.3d 174, 182 [272 Cal.Rptr. 605], internal citations omitted.)
- “Civil Code section 3334 requires that restoration costs be *reasonable*. In addition, general principles of damages in trespass cases require that the damages bear a *reasonable* relationship to the harm caused by the trespass. *Mangini* explains that whether abatement costs are *reasonable* requires an evaluation of a number of fundamental considerations, including the expense and time required to perform the abatement, along with other legitimate competing interests. (*Mangini, supra*, 12 Cal.4th at p. 1100; see also *Beck, supra*, 44 Cal.App.4th at pp. 1221–1222 [reasonableness includes consideration of monetary expense, burden on public, and costs of remediation versus value of land].)” (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 601 [63 Cal.Rptr.3d 165], original italics.)
- “The trial court must instruct the jury on how to determine whether the statutory requirement that any restoration costs be reasonable was met. It must also advise the jury what to do if the jury concludes the evidence shows the proposed restoration project to be unreasonable.” (*Starrh & Starrh Cotton Growers, supra*, 153 Cal.App.4th at pp. 600–601.)
- “Whether the restoration costs are reasonable is a question for the trier of fact in the first instance, but an award of such costs may be unreasonable as a matter of law if it is grossly disproportionate to the value of the property or the harm caused by the defendant.” (*Kelly, supra*, 179 Cal.App.4th at p. 451.)
- “Trial courts in trespass actions have historically been given great flexibility to award damages that fit the particular facts of the case.” (*Starrh & Starrh Cotton Growers, supra*, 153 Cal.App.4th at p. 604.)
- “[I]f a plaintiff has a personal reason to restore the property to its former condition, he or she may recover the restoration costs even if such costs exceed the diminution in value. This rule is sometimes referred to as the ‘personal reason’ exception.’ Even when this exception applies, however, restoration costs ‘are allowed only if they are reasonable in light of the value of the real property before the injury and the actual damage sustained.’ ” (*Kelly, supra*, 179 Cal.App.4th at pp. 450-451, internal citations omitted.)
- “Whether the restoration costs are reasonable is a question for the trier of fact in the first instance, but an award of such costs may be unreasonable as a matter of law if it is grossly disproportionate to the value of the property or the harm caused by the defendant.” (*Salazar, supra*, 245 Cal.App.4th at p. 644.)
- “Contrary to the defendants’ argument, the ‘personal reason’ exception does not require that the [plaintiffs] own a ‘unique’ home. Rather, all that is required is some personal use by them and a bona fide desire to repair or restore.” (*Orndorff v. Christiana Community Builders* (1990) 217 Cal.App.3d 683, 688 [266 Cal.Rptr. 193].)
- “Under California law, damages for diminution in value may only be recovered for permanent, not

continuing, nuisances.” (*Gehr v. Baker Hughes Oil Field Operations, Inc.* (2008) 165 Cal.App.4th 660, 663 [81 Cal.Rptr.3d 219].)

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1727, 1728

California Real Property Remedies Practice (Cont.Ed.Bar) Damages for Injury to Real Property, § 11.5

4 Levy et al., California Torts, Ch. 52, *Medical Expenses and Economic Loss*, § 52.35 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 177, *Damages*, § 177.44 (Matthew Bender)

22 California Points and Authorities, Ch. 225, *Trespass*, § 225.147 (Matthew Bender)

1 California Civil Practice: Torts, § 5:19 (Thomson Reuters)



## 4000. Conservatorship—Essential Factual Elements

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[*Name of petitioner*] **claims that [*name of respondent*] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism] and therefore should be placed in a conservatorship. In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled due to a mental disorder or chronic alcoholism. To succeed on this claim, [*name of petitioner*] must prove beyond a reasonable doubt all of the following:**

1. **That [*name of respondent*] [has a mental disorder/is impaired by chronic alcoholism]; [and]**
  2. **That [*name of respondent*] is gravely disabled as a result of the [mental disorder/chronic alcoholism][; and/.]**
  - [3. **That [*name of respondent*] is unwilling or unable voluntarily to accept meaningful treatment.**]
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*New June 2005; Revised June 2016*

### Directions for Use

There is a split of authority as to whether element 3 is required. (Compare *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 [257 Cal.Rptr. 860] [“[M]any gravely disabled individuals are simply beyond treatment.”] with *Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369] [jury should be allowed to consider all factors that bear on whether person should be on LPS conservatorship, including willingness to accept treatment].)

### Sources and Authority

- Right to Jury Trial. Welfare and Institutions Code section 5350(d).
- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “The Lanterman-Petris-Short Act (the act) governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.” (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008–1009 [36 Cal.Rptr.2d 40, 884 P.2d 988].)
- “The right to a jury trial upon the establishment of conservatorship is fundamental to the protections

afforded by the LPS. As related, that right is expressly extended to the reestablishment of an LPS conservatorship.” (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037 [226 Cal.Rptr. 33], internal citations omitted.)

- “[T]he trial court erred in accepting counsel's waiver of [conservatee]’s right to a jury trial . . . . (*Estate of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253 [193 Cal.Rptr.3d 237].)
- ~~“ ‘The due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act.’ An LPS commitment order involves a loss of liberty by the conservatee. Consequently, it follows that a trial court must obtain a waiver of the right to a jury trial from the person who is subject to an LPS commitment.” (*Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, 382–383 [199 Cal.Rptr.3d 689] Noting that a finding of grave disability may result in serious deprivation of personal liberty, the [Supreme Court] held that the due process clause of the California Constitution requires that proof beyond a reasonable doubt and jury unanimity be applied to conservatorship proceedings under the LPS Act.” (*Conservatorship of Benvenuto, supra*, 180 Cal.App.3d at p. 1038, internal citations omitted.)~~
- “We ... hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons.” (*Conservatorship of Davis, supra*, 124 Cal.App.3d at p. 328.)
- “The jury should determine if the person voluntarily accepts meaningful treatment, in which case no conservatorship is necessary. If the jury finds the person will not accept treatment, then it must determine if the person can meet his basic needs on his own or with help, in which case a conservatorship is not justified.” (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093 [242 Cal.Rptr. 289].)
- “Our research has failed to reveal any authority for the proposition [that] without a finding that the proposed conservatee is unable or unwilling to voluntarily accept treatment, the court must reject a conservatorship in the face of grave disability. ... Some persons with grave disabilities are beyond treatment. Taken to its logical conclusion, they would be beyond the LPS Act’s reach, according to the argument presented in this appeal.” (*Conservatorship of Symington, supra*, 209 Cal.App.3d at p. 1469.)
- “The party seeking imposition of the conservatorship must prove the proposed conservatee’s grave disability beyond a reasonable doubt and the verdict must be issued by a unanimous jury.” (*Conservatorship of Susan T., supra*, 8 Cal.4th at p. 1009, internal citation omitted.)

### Secondary Sources

14 Witkin, Summary of California Law (10th ed. 2005) Wills and Probate, § 945

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) Ch. 23

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.30 et seq. (Matthew Bender)

## 4120. Affirmative Defense—Statute of Limitations

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**[Name of defendant] contends that [name of plaintiff]’s lawsuit was not filed within the time set by law. To succeed on this defense, [name of defendant] must prove that [name of plaintiff]’s claimed harm occurred before [insert date four years before complaint was filed] unless [name of plaintiff] proves that before [insert date four years before complaint was filed], [he/she/it] did not discover, and did not know of facts that would have caused a reasonable person to suspect, [name of defendant]’s wrongful act or omission.**

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*New April 2007; Renumbered from CACI No. 4106 December 2007; Revised December 2012*

### Directions for Use

Read this instruction only for a cause of action for breach of fiduciary duty. For a statute-of-limitations defense to a cause of action for personal injury or wrongful death due to wrongful or negligent conduct, see CACI No. 454, *Affirmative Defense—Statute of Limitations*, and CACI No. 455, *Statute of Limitations—Delayed Discovery*.

This instruction assumes that the four-year “catch-all” statute of limitations of Code of Civil Procedure section 343 applies to claims for breach of fiduciary duty. (See *Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1230 [282 Cal.Rptr. 43].) There is, however, language in several cases supporting the proposition that if the breach can be characterized as constructive fraud, the three-year limitation period of Code of Civil Procedure section 338(d) applies. (See *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1312 [139 Cal.Rptr.3d 670].) If the court determines that the claim is actually for constructive fraud, a date three years before the complaint was filed may be used instead of a four-year date. It is not clear, however, when a breach of fiduciary duty might constitute constructive fraud for purposes of the applicable statute of limitations. (Compare *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 607 [129 Cal.Rptr.3d 525] [suggesting that breach of fiduciary duty founded on concealment of facts would be subject to three-year statute] with *Stalberg, supra*, 230 Cal.App.3d at p. 1230 [applying four-year statute to breach of fiduciary duty based on concealment of facts].)

Do not use this instruction in an action against an attorney. For a statute-of-limitations defense to a cause of action, other than actual fraud, against an attorney acting in the capacity of an attorney, see CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit*, and CACI No. 611, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—Four-Year Limit*. One cannot avoid a shorter limitation period for attorney malpractice (see Code Civ. Proc., § 340.6) by pleading the facts as a breach of fiduciary duty or constructive fraud. (See *Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 67–68 [72 Cal.Rptr.2d 359]; see also *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 322 [166 Cal.Rptr.3d 116] [constructive fraud *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1368 [12 Cal.Rptr.2d 354].)

### Sources and Authority

- Four-Year Statute of Limitations. Code of Civil Procedure section 343.

- “The statute of limitations for breach of fiduciary duty is four years. (§ 343.)” (*Stalberg, supra*, 230 Cal.App.3d at p. 1230, internal citation omitted.)
- “[W]here the gravamen of the complaint is that defendant's acts constituted actual or constructive fraud, the applicable statute of limitations is the [Code of Civil Procedure section 338, subdivision (d) three-year] limitations period,’ governing fraud even though the cause of action is designated by the plaintiff as a claim for breach of fiduciary duty.” (*Thomson, supra*, 198 Cal.App.4th at p. 607.)
- “Defendants argue on appeal that the gravamen of plaintiff’s complaint is that defendants’ acts constituted actual or constructive fraud, and thus should be governed by the fraud statute of limitations. We disagree. Plaintiff’s claim is not founded upon the concealment of facts but upon defendants’ alleged failure to draft documents necessary to the real estate transaction in which they represented plaintiff. The allegation is an allegation of breach of fiduciary duty, not fraud.” (*Thomson, supra*, 198 Cal.App.4th at p. 607.)
- “Breach of fiduciary duty not amounting to fraud or constructive fraud is subject to the four-year ‘catch-all statute’ of Code of Civil Procedure section 343 . . . . Fraud is subject to the three-year statute of limitations under Code of Civil Procedure section 338. . . . [¶][¶] However, a breach of a fiduciary duty usually constitutes constructive fraud.” (*William L. Lyon & Associates, Inc., supra*, 204 Cal.App.4th at pp. 1312, 1313.)
- “The statute of limitations for breach of fiduciary duty is three years or four years, depending on whether the breach is fraudulent or nonfraudulent.” (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1479 [171 Cal.Rptr.3d 548].)
- “A breach of fiduciary duty claim is based on concealment of facts, and the statute begins to run when plaintiffs discovered, or in the exercise of reasonable diligence could have discovered, that facts had been concealed.” (*Stalberg, supra*, 230 Cal.App.3d at p. 1230, internal citation omitted.)
- “We also are not persuaded by [defendant]’s contention breach of fiduciary duty can only be characterized as constructive fraud (which does not include fraudulent intent as an element). This simply is not true: ‘A misrepresentation that constitutes a breach of a fiduciary or confidential a [*sic*] relationship may, depending on whether an intent to deceive is present, constitute either actual or constructive fraud. However, the issue is usually discussed in terms of whether the misrepresentation constitutes constructive fraud, because actual fraud can exist independently of a fiduciary or confidential relationship, while the existence of such a relationship is usually crucial to a finding of constructive fraud.’ ” (*Worthington v. Davi* (2012) 208 Cal.App.4th 263, 283 [145 Cal.Rptr.3d 389].)
- “ ‘Where a fiduciary obligation is present, the courts have recognized a postponement of the accrual of the cause of action until the beneficiary has knowledge or notice of the act constituting a breach of fidelity. [Citations.] The existence of a trust relationship limits the duty of inquiry. “Thus, when a potential plaintiff is in a fiduciary relationship with another individual, that plaintiff’s burden of discovery is reduced and he is entitled to rely on the statements and advice provided by the fiduciary.” ’ ” (*WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 157 [192 Cal.Rptr.3d 423].)

- “The distinction between the rules excusing a late discovery of fraud and those allowing late discovery in cases in the confidential relationship category is that in the latter situation, the duty to investigate may arise later because the plaintiff is entitled to rely upon the assumption that his fiduciary is acting on his behalf. However, once a plaintiff becomes *aware* of facts which would make a reasonably prudent person suspicious, the duty to investigate arises and the plaintiff may then be charged with knowledge of the facts which would have been discovered by such an investigation.” (*Hobbs v. Bateman Eichler, Hill Richards, Inc.* (1985) 164 Cal.App.3d 174, 202 [210 Cal.Rptr. 387], original italics, internal citations omitted.)
- “ ‘[R]esolution of the statute of limitations issue is normally a question of fact . . . .’ ” (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 487 [59 Cal.Rptr.2d 20, 926 P.2d 1114].)
- “[T]he statute of limitations for aiding and abetting a breach of fiduciary duty is the same as the statute of limitations for breach of fiduciary duty.” (*American Master Lease LLC, supra*, 225 Cal.App.4th at p. 1479[.] )
- “ ‘Constructive fraud is a unique species of fraud applicable only to a fiduciary or confidential relationship.’ [Citation.] [¶] ‘[A]s a general principle constructive fraud comprises any act, omission or concealment involving a breach of legal or equitable duty, trust or confidence which results in damage to another even though the conduct is not otherwise fraudulent. Most acts by an agent in breach of his fiduciary duties constitute constructive fraud. The failure of the fiduciary to disclose a material fact to his principal which might affect the fiduciary's motives or the principal's decision, which is known (or should be known) to the fiduciary, may constitute constructive fraud. . . .’ ” (*Mark Tanner Constr. v. Hub Internat. Ins. Servs.* (2014) 224 Cal.App.4th 574, 588 [169 Cal.Rptr.3d 39].)

### ***Secondary Sources***

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 677–679

Vapnek et al., California Practice Guide: Professional Responsibility, Ch. 6-D, *Professional Liability*, ¶ 6:425.4 (The Rutter Group)

3 Levy et al., California Torts, Ch. 32, *Liability of Attorneys*, § 32.60 (Matthew Bender)

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, § 76.170 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 345, *Limitation of Actions*, § 345.19[4] (Matthew Bender)

2A California Points and Authorities, Ch. 24A, *Attorneys at Law: Malpractice*, § 24A.29 (Matthew Bender)

UNLAWFUL DETAINER

**4304. Termination for Violation of Terms of Lease/Agreement—Essential Factual Elements**

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**[Name of plaintiff] claims that [name of defendant] [and [name of subtenant], a subtenant of [name of defendant],] no longer [has/have] the right to occupy the property because [name of defendant] has failed to perform [a] requirement(s) under [his/her/its] [lease/rental agreement/sublease]. To establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of plaintiff] [owns/leases] the property;**
- 2. That [name of plaintiff] [rented/subleased] the property to [name of defendant];**
- 3. That under the [lease/rental agreement/sublease], [name of defendant] agreed [insert required condition(s) that were not performed];**
- 4. That [name of defendant] failed to perform [that/those] requirement(s) by [insert description of alleged failure to perform];**
- 5. That [name of plaintiff] properly gave [name of defendant] [and [name of subtenant]] three days' written notice to [either [describe action to correct failure to perform] or] vacate the property; [and]**
- [6. That [name of defendant] did not [describe action to correct failure to perform]; and]**
- 7. That [name of defendant] [or subtenant [name of subtenant]] is still occupying the property.**

**[[Name of defendant]'s failure to perform the requirement(s) of the [lease/rental agreement/sublease] must not be trivial, but must be a substantial violation of [an] important obligation(s).]**

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*New August 2007; Revised June 2010, December 2010, June 2011, December 2011*

**Directions for Use**

Include the bracketed references to a subtenancy in the opening paragraph, in element 5, and in the last element if persons other than the tenant-defendant are in occupancy of the premises.

If the plaintiff is the landlord or owner, select either “lease” or “rental agreement” in the opening paragraph and in element 3, “owns” in element 1, and “rented” in element 2. Commercial documents are usually called “leases” while residential documents are often called “rental agreements.” Select the term that is used on the written document.

If the plaintiff is a tenant seeking to recover possession from a subtenant, select “sublease” in the opening paragraph and in element 3, “leases” in element 1, and “subleased” in element 2. (Code Civ. Proc., § 1161(3).)

Defective service may be waived if defendant admits timely receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord’s failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

If the lease specifies a time period for notice other than the three-day period, substitute that time period in element 5.

If the violation of the condition or covenant involves assignment, sublet, or waste, or if the breach cannot be cured, the landlord is entitled to possession on service of a three-day notice to quit; no opportunity to cure by performance is required. (Code Civ. Proc., § 1161(4) ; *Salton Community Services Dist. v. Southard* (1967) 256 Cal.App.2d 526, 529 [64 Cal.Rptr. 246].) In such a case, omit the bracketed language in element 5 and also omit element 6. If the violation involves nuisance or illegal activity, give CACI No. 4308, *Termination for Nuisance or Unlawful Use—Essential Factual Elements*.

Include the last paragraph if the tenant alleges that the violation was trivial. (*See Boston LLC v. Juarez* (2016) 245 Cal.App.4th 75, 81 [199 Cal.Rptr.3d 452].) It is not settled whether the landlord must prove the violation was substantial or the tenant must prove triviality as an affirmative defense. (See *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051 [241 Cal.Rptr. 487]; *Keating v. Preston* (1940) 42 Cal.App.2d 110, 118 [108 P.2d 479].)

Local or federal law may impose additional requirements for the termination of a rental agreement based on breach of a condition. This instruction should be modified accordingly.

See CACI No. 4305, *Sufficiency and Service of Notice of Termination for Violation of Terms of Agreement*, for an instruction on proper written notice.

See also CACI No. 312, *Substantial Performance*.

## Sources and Authority



- Unlawful Detainer Based on Failure to Perform Conditions. Code of Civil Procedure section 1161(3), (4).
- Conversion of Unlawful Detainer to Ordinary Civil Action if Possession No Longer at Issue. Civil Code section 1952.3(a).
- “[Code of Civil Procedure section 1161(3)] provides, that where the conditions or covenants of a lease can be performed, a lessee may within three days after the service of the notice perform them, and so save a forfeiture of his lease. By performing, the tenant may defeat the landlord’s claim for possession. Where, however, the covenants cannot be performed, the law recognizes that it would be an idle and useless ceremony to demand their performance, and so dispenses with the demand to do so. And this is all that it does dispense with. It does not dispense with the demand for the possession of the premises. It requires that in any event. If the covenants can be performed, the notice is in the alternative, either to perform them or deliver possession. When the covenants are beyond performance an alternative notice would be useless, and demand for possession alone is necessary. Bearing in mind that the object of this statute is to speedily permit a landlord to obtain possession of his premises where the tenant has violated the covenants of the lease, the only reasonable interpretation of the statute is, that before bringing suit he shall take that means which should be most effectual for the purpose of obtaining possession, which is to demand it. If upon demand the tenant surrenders possession, the necessity for any summary proceeding is at an end, and by the demand is accomplished what the law otherwise would accord him under the proceeding.” (*Schnittger v. Rose* (1903) 139 Cal. 656, 662 [73 P. 449].)
- “It is well settled that the notice required under [Code Civ. Proc., § 1161] subdivisions 2 and 3 (where the condition or covenant assertedly violated is capable of being performed) must be framed in the alternative, viz., pay the rent *or* quit, perform the covenant *or* quit, and a notice which merely directs the tenant to quit is insufficient to render such tenant guilty of unlawful detainer upon his continued possession.” (*Hinman v. Wagnon* (1959) 172 Cal.App.2d 24, 27 [341 P.2d 749], original italics.)
- “Plaintiff argues, however, that he should be allowed to amend his complaint so as to bring his action under section 1161, subdivision 4. The notice thereunder required need not be framed in the alternative. However, plaintiff has at no time, either by his three days’ notice or in any of his pleadings, suggested that defendant had assigned the lease or sublet the property, or had committed waste contrary to the conditions or covenants of the lease, or maintained a nuisance on the premises, or had used the property for an unlawful purpose. Plaintiff had three opportunities to state a cause of action; if he was of the belief that facts existed which brought his case under 1161, subdivision 4, it would have been a simple matter to allege such facts, but this he did not do.” (*Hinman, supra*, 172 Cal.App.2d at p. 29.)
- “The law sensibly recognizes that although every instance of noncompliance with a contract’s terms constitutes a breach, not every breach justifies treating the contract as terminated. Following the lead of the Restatements of Contracts, California courts allow termination only if the breach can be classified as ‘material,’ ‘substantial,’ or ‘total.’ ” (*Superior Motels, Inc., supra*, 195 Cal.App.3d at p. 1051, internal citations omitted.)

- “ [A] lease may be terminated only for a substantial breach thereof, and not for a mere technical or trivial violation.’ This materiality limitation even extends to leases which contain clauses purporting to dispense with the materiality limitation.” (Boston LLC, supra, 245 Cal.App.4th at p. 81, internal citation omitted.)
- “ ‘Normally the question of whether a breach of an obligation is a material breach ... is a question of fact,’ however ‘if reasonable minds cannot differ on the issue of materiality, the issue may be resolved as a matter of law.’ ” California too accepts that “[whether] a breach is so material as to constitute cause for the injured party to terminate a contract is ordinarily a question for the trier of fact.” (Boston LLC, supra, 245 Cal.App.4th at p. 87 Superior Motels, Inc., supra, 195 Cal.App.3d at pp. 1051–1052, internal citations omitted.)
- “As to the substantiality of the violation, the evidence shows that the violation was wilful. Therefore, the court will not measure the extent of the violation.” (*Hignell v. Gebala* (1949) 90 Cal.App.2d 61, 66 [202 P.2d 378].)
- “Where a covenant in a lease has been breached and the breach cannot be cured, a demand for performance is not a condition precedent to an unlawful detainer action.” (*Salton Community Services Dist.*, supra, 256 Cal.App.2d at p. 529.)
- “If the tenant gives up possession of the property after the commencement of an unlawful detainer proceeding, the action becomes an ordinary one for damages.” (*Fish Construction Co. v. Moselle Coach Works, Inc.* (1983) 148 Cal.App.3d 654, 658 [196 Cal.Rptr. 174].)
- “Proper service on the lessee of a valid three-day notice to pay rent or quit is an essential prerequisite to a judgment declaring a lessor’s right to possession under section 1161, subdivision 2. A lessor must allege and prove proper service of the requisite notice. Absent evidence the requisite notice was properly served pursuant to section 1162, no judgment for possession can be obtained.” (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 513 [65 Cal.Rptr.2d 457], internal citations omitted.)
- “Section 1162 does not authorize service of a three-day notice to pay rent or quit by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter’s residence or usual place of business *and* sending a copy through the mail to the tenant’s *residence*; or posting *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required.” (*Liebovich*, supra, 56 Cal.App.4th at p. 516, original italics, internal citations omitted.)
- “In the cases discussed ... , a finding of proper service turned on a party’s acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the three-day notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a three-day notice to pay rent or quit provided in [Code of Civil

Procedure] section 1162. Therefore, the judgment must be reversed.” (*Liebovich, supra*, 56 Cal.App.4th at p. 518.)

- “[Code of Civil Procedure section 1162 specifies] three ways in which service of the three-day notice may be effected on a residential tenant: . . . . As explained in *Liebovich, supra*, . . . , ‘[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.’ ” (*Palm Property Investments, LLC, supra*, 194 Cal.App.4th at p. 1425.)

### ***Secondary Sources***

12 Witkin, Summary of California Law (10th ed. ~~2006~~2005) Real Property, §§ 720, 726

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.50–8.54

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.2, 6.38–6.49

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 12-G, “Section 8” Government-Subsidized Housing—Termination ~~Of~~ Section 8 Tenancies, ¶ 12:200 et seq. (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, Terminating the Tenancy and Related Remedies—Bases For Terminating Tenancy, ¶ 7:93 et seq. (The Rutter Group)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.23, 210.24 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.07

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.10 (Matthew Bender)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.11, 236.20 (Matthew Bender)

Miller & Starr, California Real Estate ~~4th~~, (~~3d ed. 2008~~) Ch. ~~1934~~, *Landlord-Tenant*, § ~~34.182~~ ~~19:200–19.205~~ (Thomson Reuters)

**4541. Contractor's Damages for Breach of Construction Contract—Change Orders/Extra Work—  
Total Cost Recovery**

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**[Name of plaintiff] claims that [name of defendant] breached the parties' contract by increasing or changing the scope of the [project/describe construction project, e.g., apartment building] beyond what was required by the contract. [Name of plaintiff], therefore, seeks to recover the total cost of all of [his/her/its] work on the [project/e.g., apartment building].**

**In order to recover the total cost of all of [his/her/its] work, [name of plaintiff] must prove all of the following:**

- 1. That the scope of work under the original contract had been altered by the changes so much that the final project was significantly different from the original project;**
- 2. That because of the scope of the changes, it is not practical to prove the actual additional costs caused by each change demanded by [name of defendant];**
- 3. That [name of plaintiff]'s original bid that was accepted by [name of defendant] was reasonable;**
- 4. That [name of plaintiff]'s actual costs were reasonable; and**
- 5. That [name of plaintiff] was not responsible for incurring the additional costs.**

**If you find that [name of plaintiff] has established all of the above, determine [name of plaintiff]'s damages by subtracting the contract price from the total cost of [name of plaintiff]'s performance of the work.**

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*New December 2010*

**Directions for Use**

This instruction should be used in an action by the contractor against the owner if the contractor claims that changes demanded by the owner were such that damages must be measured by computing the total cost to the contractor to complete the contract minus the contract price. (Cf. CACI No. 4540, *Contractor's Damages for Breach of Construction Contract—Change Orders/Extra Work*.) The difference is then considered to be the costs associated with all of the changes. For an instruction on quantum meruit recovery under the related but different theory of contract abandonment, see CACI No. 4542, *Contractor's Damages for Abandoned Construction Contract—Quantum Meruit Recovery*.

For additional instructions on contract damages generally, see CACI No. 350 et seq. in the Contracts series.

**Sources and Authority**

- “Under [the total-cost] method, damages are determined by ‘subtracting the contract amount from the total cost of performance.’ ” (*Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 243 [115 Cal.Rptr.2d 900, 38 P.3d 1120].)
- ~~“Although not favored, the total cost method—along with its subcategory, the modified total cost method—has been recognized in California as an appropriate way of computing damages.” (*JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 589 [198 Cal.Rptr.3d 47].) Although the total cost theory of proving damages in a contract case is not generally favored, under proper safeguards and where there is no better proof it has been upheld.” (*C. Norman Peterson Co. v. Container Corp. of Am.* (1985) 172 Cal.App.3d 628, 646 [218 Cal.Rptr. 592].)~~
- ~~“[T]o invoke the total cost method for recovering damages, a contractor must establish ‘(1) the impracticality of proving actual losses directly; (2) [its] bid was reasonable; (3) its actual costs were reasonable; and (4) it was not responsible for the added costs.’ ” (*JMR Construction Corp. supra*, 243 Cal.App.4th at p. 589].)~~
- ~~This [total-cost recovery] method may be used only after the trial court determines the following can be shown: (1) it is impractical for the contractor to prove actual losses directly; (2) the contractor’s bid was reasonable; (3) its actual costs were reasonable; and (4) it was not responsible for the added costs.~~ “If some of the contractor’s costs were unreasonable or caused by its own errors or omissions, then those costs are subtracted from the damages to arrive at a modified total cost. ‘If prima facie evidence under this test is established, the trier of fact then applies the same test to determine the amount of total cost or modified total cost damages to which the plaintiff is entitled.’ ” (*Dillingham-Ray Wilson v. City of Los Angeles* (2010) 182 Cal.App.4th 1396, 1408 [106 Cal.Rptr.3d 691], internal citations omitted.)
- “‘The total cost method is not a substitute for proof of causation,’ and ‘should be applied only to the smallest affected portion of the contractual relationship that can be clearly identified.’ As the United States Court of Appeals for the Federal Circuit has stated, ‘Clearly, the “actual cost method” is preferred because it provides the court ... with documented underlying expenses, ensuring that the final amount of the equitable adjustment will be just that—equitable—and not a windfall for either the government or the contractor.’ ” (*Amelco Electric, supra*, 27 Cal.4th at p. 244, internal citations omitted.)
- “We conclude [plaintiff] failed to adduce substantial evidence to warrant instructing the jury on the four-part total cost theory of damages. In particular, [plaintiff] failed to adduce evidence to satisfy at least the fourth element of the four-part test, i.e., that it was not responsible for the added expenses. A corollary of this element of the test is that the contractor must demonstrate the defendant, and not anyone else, is responsible for the additional cost.” (*Amelco Electric, supra*, 27 Cal.4th at p. 245.)
- “[W]e do not determine whether total cost damages are ever appropriate in a breach of public contract case ... .” (*Amelco Electric, supra*, 27 Cal.4th at p. 242.)

### Secondary Sources

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 910

1 California Construction Contracts, Defects, and Litigation (Cont.Ed.Bar) Ch. 5, *Private Contracts: Disputes and Remedies*, § 5.108

1 California Construction Contracts, Defects, and Litigation (Cont.Ed.Bar) Ch. 6, *Public Contracts: Disputes and Remedies*, § 6.72

3 Stein, Construction Law, Ch. 11, *Remedies and Damages*, ¶ 11.02 (Matthew Bender)

12 California Real Estate Law and Practice, Ch. 440, *Construction Contract Remedies*, § 440.14 (Matthew Bender)

10 California Forms of Pleading and Practice, Ch. 104, *Building Contracts*, § 104.14 (Matthew Bender)

~~10~~ Miller & Starr, California Real Estate ~~4th~~, (~~Thomson Reuters West 3d ed.~~) Ch. ~~2731~~, *Construction Law and Contracting*, § ~~31.7027:69~~ (~~Thomson Reuters~~)

Acret, California Construction Law Manual (~~Thomson Reuters West 6th ed. 2005~~) Ch. 7, *Public Contracts*, § 7:93 (~~Thomson Reuters~~)

~~6~~ Bruner & O'Connor on Construction Law (~~Thomson Reuters West 2002~~) Ch. 19, *Remedies and Damage Measures*, §§ 19:39, 19:94–19.95 (~~Thomson Reuters~~)

**4543. Contractor’s Damages for Breach of Construction Contract—Owner-Caused Delay or Acceleration**

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[Name of plaintiff] claims that [name of defendant] breached the parties’ contract by [delaying/accelerating] [name of plaintiff]’s work, causing [name of plaintiff] harm. If you find that [name of defendant] [delayed/accelerated] the work, you may award damages to [name of plaintiff] for all harm caused by the [delay/acceleration], including the following:

1. Expenditures that [name of plaintiff] made for labor, services, equipment, or materials that [he/she/it] otherwise would not have made but for the [delay/acceleration];
  2. Overhead that [name of plaintiff] otherwise would not have incurred but for the [delay/acceleration]; and
  3. Increase in the cost of labor, services, equipment, or materials already required under the contract that resulted from the [delay/acceleration].
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New December 2010

**Directions for Use**

This instruction should be used in an action by the contractor against the owner for economic loss incurred because the owner either delayed or demanded acceleration of the work.

For additional instructions on contract damages generally, see CACI No. 350 et seq. in the Contracts series, particularly CACI No. 351, *Special Damages*.

**Sources and Authority**

- Unreasonable Delay. Public Contract Code section 7102.
- “Delay damages are a common element recoverable by a party aggrieved by the breach of a construction contract.” (JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc. (2015) 243 Cal.App.4th 571, 585 [198 Cal.Rptr.3d 47].)
- “A subcontractor who is responsible for delaying the progress of a construction project may be held liable for delay damages incurred by the general contractor or by another subcontractor.” (JMR Construction Corp, supra, 243 Cal.App.4th at p. 586.)
- “ ‘A building contractor whose performance is delayed by the owner may have increased overhead and fixed costs resulting from a delay and may suffer labor and material cost increases or loss of labor productivity due to delays for all of which he or she would be entitled to damages.’ Extended home office overhead is one type of delay damages for which a contractor may seek recovery.” (JMR Construction Corp, supra, 243 Cal.App.4th at p. 586, internal citation omitted.)

- “Overhead expense allocable to the period of delay is allowed to the extent the evidence shows an increase in overhead because of the breach; or where other jobs, but for the delay, would have been obtained to absorb such overhead.” (*A. A. Baxter Corp. v. Colt Industries, Inc.* (1970) 10 Cal.App.3d 144, 158 [88 Cal.Rptr. 842], internal citations omitted.)
- “We conclude the trial court did not err in applying the *Eichleay* formula as a legally permissible method of determining JMR's home office overhead damages. We base this conclusion upon the expert evidence presented at trial, the general recoverability of extended home office overhead as an element of delay damages, and the federal courts' general acceptance of the *Eichleay* formula.” (*JMR Construction Corp, supra*, 243 Cal.App.4th at p. 587.)
- “The federal courts have identified three *Eichleay* requirements. ‘[T]he contractor [must] establish: (1) a government-caused delay; (2) that [the contractor] was on “standby”; and (3) that [the contractor] was unable to take on other work. [Citation.]’ ” (*JMR Construction Corp, supra*, 243 Cal.App.4th at p. 588.)
- “[A] contractor cannot recover on a claim for unabsorbed office overhead where it is able to meet the original contract deadline or finish early despite a government-caused delay. An exception applies where the contractor demonstrates from the outset an intent to complete the work early, a capacity to do so, and a likelihood of early completion but for the government's delay. Application of the three-prong test requirement ... , however, is required only where the contractor finishes the work by the original specified contract completion date or earlier.” (*Howard Contracting, Inc. v. G.A. MacDonald Construction Co.* (1998) 71 Cal.App.4th 38, 54–55, [83 Cal.Rptr.2d 590].)

### Secondary Sources

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 999

1 California Construction Contracts, Defects, and Litigation (Cont.Ed.Bar) Ch. 5, *Private Contracts: Disputes and Remedies*, § 5.107

1 California Construction Contracts, Defects, and Litigation (Cont.Ed.Bar) Ch. 6, *Public Contracts: Disputes and Remedies*, § 6.86

2 California Construction Contracts, Defects, and Litigation (Cont.Ed.Bar) Ch. 9, *Handling Disputes During Construction*, §§ 9.105–9.106

12 California Real Estate Law and Practice, Ch. 434, *Government Contracts*, § 434.90 (Matthew Bender)

42 California Forms of Pleading and Practice, Ch. 481, *Public Works*, § 481.90 (Matthew Bender)

10 Miller & Starr, California Real Estate ~~4th~~; Ch. ~~2731~~, *Construction Law and Contracting*, §§ ~~27:65, 27:83–27:85~~ 31.76, 31.85 (Thomson Reuters ~~3d ed.~~)

Acret, California Construction Law Manual (~~6th ed. 2005~~); Ch. 1, *Contracts*, §§ 1:89–1:91 (Thomson Reuters ~~6th ed. 2005~~)



Acret, California Construction Law Manual (~~6th ed. 2005~~), Ch. 7, *Public Contracts*, §§ 7:88–7:90  
(Thomson Reuters ~~6th ed. 2005~~)

6 Bruner & O'Connor on Construction Law (~~2002~~), Ch. 19, *Remedies and Damage Measures*, § 19:73  
(Thomson Reuters ~~2002~~)

Gibbs & Hunt, California Construction Law, Ch. 4, *Breach of Contract by Owner*, § 4.10 (Aspen Pub.  
16th ed. 1999)

Kamine, Public Works Construction Manual, Ch. 19, *Recovery of Delay Damages When the Owner  
Prevents Early Completion* (BNI Publications, Inc. 1996)

**4600. False Claims Act: Whistleblower Protection—Essential Factual Elements (Gov. Code, § 12653)**

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*[Name of plaintiff]* **claims that** *[name of defendant]* **[discharged/specify other adverse action]** **[him/her]** because **[he/she]** acted **[in furtherance of a false claims action/to stop a false claim by *[name of false claimant]*]**. A false claims action is a lawsuit against a person or entity that is alleged to have submitted a false claim to a government agency for payment or approval. A false claim is a claim for payment with the intent to defraud the government. In order to establish this claim, *[name of plaintiff]* **must prove all of the following:**

1. That *[name of plaintiff]* was an employee of *[name of defendant]*;
2. That *[name of false claimant]* was alleged to have defrauded the government of money, property, or services by submitting a false or fraudulent claim to the government for payment or approval;
3. That *[name of plaintiff]* *[specify acts done in furthering the false claims action or to stop a false claim]*;
4. That *[name of plaintiff]* acted **[in furtherance of a false claims action/to stop a false claim]**;
5. That *[name of defendant]* **[discharged/specify other adverse action]** *[name of plaintiff]*;
6. That *[name of plaintiff]*'s acts **[in furtherance of a false claims action/to stop a false claim]** were a substantial motivating reason for *[name of defendant]*'s decision to **[discharge/other adverse action]** **[him/her]**;
7. That *[name of plaintiff]* was harmed; and
8. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.

**[An act is “in furtherance of” a false claims action if**

**[[*[name of plaintiff]* actually filed a false claims action **[himself/herself].]****

**[or]**

**[someone else filed a false claims action but *[name of plaintiff]* *[specify acts in support of action, e.g., gave a deposition in the action]*, which resulted in the retaliatory acts.]**

**[or]**

**[no false claims action was ever actually filed, but *[name of plaintiff]* had reasonable suspicions of a false claim, and it was reasonably possible for *[name of plaintiff]*'s conduct to lead to a false claims action.]**

**The potential false claims action need not have turned out to be meritorious. [Name of plaintiff] need only show a genuine and reasonable concern that the government was being defrauded.**

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*New December 2012; Revoked June 2013; Restored and Revised December 2013; Renumbered from CACI No. 2440 and Revised June 2015*

### **Directions for Use**

The whistleblower protection statute of the False Claims Act (Gov. Code, § 12653) prohibits adverse employment actions against an employee who either (1) takes steps in furtherance of a false claims action or (2) makes efforts to stop a false claim violation. (See Gov. Code, § 12653(a).)

The second sentence of the opening paragraph defines a false claims action in its most common form: a lawsuit against someone who has submitted a false claim for payment. (See Gov. Code, § 12651(a)(1).) This sentence and element 2 may be modified if a different prohibited act is involved. (See Gov. Code, § 12651(a)(2)–(8).)

In element 3, specify the steps that the plaintiff took that are alleged to have led to the adverse action.

The statute reaches a broad range of adverse employment actions short of actual discharge. (See Gov. Code, § 12653(a).) If the case involves an adverse employment action other than termination, specify the action in elements 5 and 6. These elements may also be modified to allege constructive discharge. See CACI No. 2509, “*Adverse Employment Action*” *Explained*, and CACI No. 2510, “*Constructive Discharge*” *Explained*, for instructions under the Fair Employment and Housing Act that may be adapted for use with this instruction.

Element 6 uses the term “substantial motivating reason” to express both intent and causation between the employee’s actions and the discharge. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason*” *Explained*.) Whether the FEHA standard applies to cases under the False Claims Act has not been addressed by the courts.

Give the last part of the instruction if the claim is that the plaintiff was discharged for acting in furtherance of a false claims action.

### **Sources and Authority**

- False Claims Act: Whistleblower Protection. Government Code section 12653.
- “The False Claims Act prohibits a ‘person’ from defrauding the government of money, property, or services by submitting to the government a ‘false or fraudulent claim’ for payment.” (*Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1273 [134

Cal.Rptr.3d 883].)

- “To establish a prima facie case, a plaintiff alleging retaliation under the CFCA must show: ‘(1) that he or she engaged in activity protected under the statute; (2) that the employer knew the plaintiff engaged in protected activity; and (3) that the employer discriminated against the plaintiff because he or she engaged in protected activity.’ ” (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 455 [152 Cal.Rptr.3d 595].)
- “ ‘As a statute obviously designed to prevent fraud on the public treasury, [Government Code] section 12653 plainly should be given the broadest possible construction consistent with that purpose.’ ” (*McVeigh, supra*, 213 Cal.App.4th at p. 456.)
- “The False Claims Act bans retaliatory discharge in section 12653, which speaks not of a ‘person’ being liable for defrauding the government, but of an ‘employer’ who retaliates against an employee who assists in the investigation or pursuit of a false claim. Section 12653 has been ‘characterized as the whistleblower protection provision of the [False Claims Act and] is construed broadly.’ ” (*Cordero-Sacks, supra*, 200 Cal.App.4th at p. 1274.)
- “[T]he act's retaliation provision applies not only to qui tam actions but to false claims in general. Section 12653 makes it unlawful for an employer to retaliate against an employee who is engaged ‘in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under Section 12652.’ ” (*Cordero-Sacks, supra*, 200 Cal.App.4th at p. 1276.)
- “Generally, to constitute protected activity under the CFCA, the employee's conduct must be in furtherance of a false claims action. The employee does not have to file a false claims action or show a false claim was actually made; however, the employee must have reasonably based suspicions of a false claim and it must be reasonably possible for the employee's conduct to lead to a false claims action.” (*Kaye v. Board of Trustees of San Diego County Public Law Library* (2009) 179 Cal.App.4th 48, 60 [101 Cal.Rptr.3d 456], internal citation omitted.)
- “We do not construe *Kaye's* requirement that it be ‘reasonably possible for [the employee's conduct] to lead to a false claims action’ to mean that a plaintiff is not protected under the CFCA unless he or she has discovered grounds for a *meritorious* false claim action. ... [T]he plaintiff need only show a genuine and reasonable concern that the government was possibly being defrauded in order to establish that he or she engaged in protected conduct. Any more limiting construction or significant burden would deny whistleblowers the broad protection the CFCA was intended to provide.” (*McVeigh, supra*, 213 Cal.App.4th at pp. 457–458, original italics.)
- “Qui tam claims based on certain categories of publicly disclosed information are barred unless the plaintiff is an original source of the information. This prohibition, known as the public disclosure bar, is intended to prevent ‘parasitic or opportunistic actions by persons simply taking advantage of public information without contributing to or assisting in the exposure of the fraud.’ ” In light of CFCA's purpose of protecting the public fisc, ‘the public disclosure bar should be applied only as necessary to preclude parasitic or opportunistic actions, but not so broadly as to undermine the Legislature's intent that relators assist in the prevention, identification,

investigation, and prosecution of false claims.’ ” (State ex rel. Bartlett v. Miller (2016) 243 Cal.App.4th 1398, 1407 [197 Cal.Rptr.3d 673], footnote and internal citations omitted.)

- “There is a dearth of California authority discussing what constitutes protected activity under the CFCA. However, because the CFCA is patterned on a similar federal statute (31 U.S.C. § 3729 et seq.), we may rely on cases interpreting the federal statute for guidance in interpreting the CFCA. (*Kaye, supra*, 179 Cal.App.4th at pp. 59–60.)

### ***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 288

5 Witkin, Summary of California Law (10th ed. 2005) Torts, § 767

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 468, *Public Entities and Officers: False Claims Actions*, § 468.25 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, § 100.61 (Matthew Bender)

**4605. Whistleblower Protection—Health or Safety Complaint—Essential Factual Elements (Lab. Code, § 6310)**

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**[Name of plaintiff] claims that [name of defendant] [discharged/[other adverse employment action]] [him/her] in retaliation for [his/her] [specify, e.g., complaint to the Division of Occupational Safety and Health regarding unsafe working conditions]. In order to establish this claim, [name of plaintiff] must prove all of the following:**

- 1. That [name of plaintiff] was an employee of [name of defendant];**
- 2. [That [name of plaintiff], on [his/her] own behalf or on behalf of others, [select one or more of the following options:]**

**[made [an oral/a written] complaint to [specify to whom complaint was directed, e.g., the Division of Occupational Safety and Health] regarding [unsafe/unhealthy] working conditions;]**

**[or]**

**[[initiated a proceeding/caused a proceeding to be initiated] relating to [his/her [or] another person's] rights to workplace health or safety;]**

**[or]**

**[[testified/was about to testify] in a proceeding related to [his/her [or] another person's] rights to workplace health or safety;]**

**[or]**

**[exercised [his/her [or] another person's] rights to workplace health or safety;]**

**[or]**

**[participated in a workplace health and safety committee;]**

- 3. That [name of defendant] [discharged/[other adverse employment action]] [name of plaintiff];**
  - 4. That [name of plaintiff]'s [specify] was a substantial motivating reason for [name of defendant]'s decision to [discharge/[other adverse employment action]] [name of plaintiff];**
  - 5. That [name of plaintiff] was harmed; and**
  - 6. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.**
-

*New December 2015; Revised December 2016*

### Directions for Use

Use this instruction for a whistleblower claim under Labor Code section 6310 for employer retaliation for an employee's, or an employee's family member's, complaint or other protected activity about health or safety conditions. Select the appropriate statutorily protected activity in element 2 and summarize it in the introductory paragraph. (See Lab. Code, § 6310(a), (c).)

With regard to the first option in element 2, the complaint must have been made to (1) the Division of Occupational Safety and Health, (2) to another governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, (3) to the employer, or (4) to the employee's representative. (Lab. Code, § 6310(a)(1).)

The statute requires that the employee's complaint be "bona fide." (See Lab. Code, § 6310(b).) There appears to be a split of authority as to whether "bona fide" means that there must be an actual health or safety violation or only that the employee have a good-faith belief that there are violations. (See *Touchstone Television Productions v. Superior Court* (2012) 208 Cal.App.4th 676, 682, fn. 5 [145 Cal.Rptr.3d 766].) The instruction should be modified if the court decides to instruct one way or the other on the meaning of "bona fide."

Note that element 4 uses the term "substantial motivating reason" to express both intent and causation between the employee's protected conduct and the defendant's adverse action. "Substantial motivating reason" has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, "*Substantial Motivating Reason*" Explained.) Whether the FEHA standard applies under Labor Code section 6310 has not been addressed by the courts. There is authority for a "but for" causation standard instead of "substantial motivating reason." (See *Touchstone Television Productions, supra*, 208 Cal.App.4th at pp. 681–682.)

### Sources and Authority

- Whistleblower Protection for Report of Health or Safety Violation. Labor Code section 6310.
- "Division" Defined. Labor Code section 6302(d).
- "[Plaintiff]'s action is brought under section 6310, subdivision (a)(1), which prohibits an employer from discriminating against an employee who makes 'any oral or written complaint.' Subdivision (b) provides that '[a]ny employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to ... his or her employer ... of unsafe working conditions, or work practices ... shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.' " (*Sheridan v. Touchstone Television Productions, LLC* (2015) 241

Cal.App.4th 508, 512 [193 Cal.Rptr.3d 811].)

- “[T]he plaintiff did not lack a remedy: she could sue under section 6310, subdivision (b) which permits ‘an action for damages if the employee is discharged, threatened with discharge, or discriminated against by his or her employer because of the employee's complaints about unsafe work conditions. Here, it is alleged that [the defendant] discriminated against [the plaintiff] by not renewing her employment contract. *To prevail on the claim, she must prove that, but for her complaints about unsafe work conditions, [the defendant] would have renewed the employment contract. Damages, however, are limited to “lost wages and work benefits caused by the acts of the employer.”*’ ” (Touchstone Television Productions, supra, 208 Cal.App.4th at pp. 681–682, original italics.)
- “The voicing of a fear about one's safety in the workplace does not necessarily constitute a complaint about unsafe working conditions under Labor Code section 6310. [Plaintiff]’s declaration shows only that she became frightened for her safety as a result of her unfortunate experience ... and expressed her fear to [defendant]; it is not evidence that the ... office where she worked was actually unsafe within the meaning of Labor Code sections 6310 and 6402. Hence, [plaintiff]’s declaration fails to raise a triable issue of fact as to whether she was terminated for complaining to [defendant] about unsafe working conditions in violation of Labor Code section 6310.” (Muller v. Auto. Club of So. Cal. (1998) 61 Cal.App.4th 431, 452 [71 Cal.Rptr.2d 573], disapproved on other grounds in Colmenares v. Braemar Country Club, Inc. (2003) 29 Cal.4th 1019, 1031, fn. 6 [130 Cal.Rptr.2d 662, 63 P.3d 220].)
- “Citing Muller v. Automobile Club of So. California (1998) 61 Cal.App.4th 431, 452 [71 Cal.Rptr.2d 573], defendants assert plaintiff's causes of action based on section 6310 must fail because an essential element of a section 6310 violation is that the workplace must actually be unsafe. We first note that the Muller court cites no authority for this assertion. It appears to contradict Justice Grodin's pronouncement that ‘... an employee is protected against discharge or discrimination for complaining in good faith about working conditions or practices which he reasonably believes to be unsafe, whether or not there exists at the time of the complaint an OSHA standard or order which is being violated.’ We agree that an employee must be protected against discharge for a good faith complaint about working conditions which he believes to be unsafe.” (Cabesuella v. Browning-Ferris Indus. (1998) 68 Cal.App.4th 101, 109 [80 Cal.Rptr.2d 60], internal citation omitted.)

### Secondary Sources

3 Witkin, Summary of California Law (10th ed. 2010) Agency, § 370

2 Wilcox, California Employment Law, Ch. 21, *Occupational Health and Safety Regulation*, § 21.20 (Matthew Bender)

3 California Torts, Ch. 40A, *Wrongful Termination*, § 40A.30 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, § 249.15 (Matthew Bender)



10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, § 100.42 et seq. (Matthew Bender)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Jury Instructions: Recommend to Judicial Council That It Approve Publication of Legally Significant Additions and Revisions (Action Required)

*Committee or other entity submitting the proposal:*

Advisory Committee on Civil Jury Instructions

*Staff contact (name, phone and e-mail):* Bruce Greenlee, Attorney, Legal Services 415-865-7698

*bruce.greenlee@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Maintaining and expanding CACI (the committee's ongoing project)

Project description from annual agenda:

*If requesting July 1 or out of cycle, explain:*

Rules 2.1050(d) and 10.58(a) of the California Rules of Court require the advisory committee to update, amend, and add topics to CACI on a regular basis and to submit its recommendations to the council for approval. Jury instructions are currently revised twice a year, and more often if necessary. Release 29 is the second CACI release for 2016. Release 28 was approved by the Judicial Council on June 24, 2016.

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

In addition to recommending approval of 22 new and revised CACI instructions and verdict forms to the council, the advisory committee also requests that RUPRO give final approval to 74 revised CACI instructions under the provisions of the guidelines adopted on December 19, 2006 regarding Jury Instructions Corrections and Technical and Minor Substantive Changes.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 15–16, 2016

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Title	Agenda Item Type
Jury Instructions: New and Revised Civil Jury Instructions and Verdict Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
<i>Judicial Council of California Civil Jury Instructions (CACI)</i>	December 16, 2016
Recommended by	Date of Report
Advisory Committee on Civil Jury Instructions	November 2, 2016
Hon. Martin J. Tangeman, Chair	Contact
	Bruce Greenlee, 415-865-7698
	<a href="mailto:bruce.greenlee@jud.ca.gov">bruce.greenlee@jud.ca.gov</a>

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### Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approving for publication the new and revised civil jury instructions and verdict forms prepared by the committee. These revisions bring the instructions up to date with developments in the law over the previous six months.

### Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective December 16, 2016, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court the civil jury instructions and verdict forms prepared by the committee. On Judicial Council approval, the instructions will be published in the official 2017 edition of the *Judicial Council of California Civil Jury Instructions*.

A table of contents and the proposed new and revised civil jury instructions and verdict forms are attached at pages 13–88. In addition, one hundred eighty-two additional verdict forms that all have the same proposed change, are attached at pages 123–645.

## 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.<sup>1</sup> At this meeting, the council voted to approve the *CACI* instructions 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*.

This is the 29th release of *CACI*. The council approved *CACI* release 28 at its June 2016 meeting.

## Rationale for Recommendation

The committee recommends proposed revisions to the following 21 instructions and verdict forms: *CACI* Nos. 107, 303, VF-400, 706, 710, 2505, 2506, 2540, 3061, 3063, 3064, VF-3030, VF-3031, VF-3033, 3103, 3511, 3706, 3707, 4100, VF-4400, and 5003. The committee further recommends addition of one new instruction: 3935 on prejudgment interest.

Verdict form VF-400 has a proposed change to the Directions for Use that addresses prejudgment interest.<sup>2</sup> This same change is proposed for 186 other verdict forms, including the four verdict forms listed above (VF-3030, VF-3031, VF-3033, and VF-4400), which include other changes not related to prejudgment interest.

The Judicial Council's Rules and Projects Committee (RUPRO) has also approved changes to 74 additional instructions under a delegation of authority from the council to RUPRO.<sup>3</sup>

The instructions were revised or added based on comments or suggestions from justices, judges, and attorneys; 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.

### **New instruction *CACI* No. 3935: *Prejudgment Interest***

Civil Code section 3288 provides:

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<sup>1</sup> 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."

<sup>2</sup> See discussion under New instruction: *CACI* No. 3935: *Prejudgment Interest*, below.

<sup>3</sup> At its October 20, 2006, meeting, the Judicial Council delegated to 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 RUPRO 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 RUPRO has done.

Under the implementing guidelines that RUPRO approved on December 14, 2006, which were submitted to the council on February 15, 2007, RUPRO 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.

In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.<sup>4</sup>

The statute creates a right for a jury to award prejudgment interest on noncontract claims, without any further guidance or limitation.

The Task Force on Civil Jury Instructions, the original drafters of the CACI instructions, included the following sentence with many, but not all, noncontract verdict forms:<sup>5</sup>

This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

This sentence passed without comment for 10 years. Then in 2014, an attorney committee member questioned the legal significance of the sentence and its helpfulness to users. The committee has been considering what, if anything, to do about it ever since.

There was a general consensus that the sentence provides very little guidance to users. The statute is cited, but no further information or authority on prejudgment interest is provided. There is no help as to how a verdict form may be modified and no explanation of what “specific losses” are within the statute. Also not addressed is just what the jury is supposed to do.

Beyond that consensus, there was little else that the committee agreed on. Proposals ranged from doing nothing until some court says there’s a problem, to adding a prejudgment interest instruction, verdict form, and jury worksheet to compute the award. Numerous drafts were presented; none were approved. But finally, for this release, the committee voted to add an instruction and revise the sentence in the Directions for Use for the verdict forms. The committee did not approve a worksheet.

Over the two-plus years that prejudgment interest has been on its agenda, the committee has confronted the following issues:

1. Who decides that the case is one for which prejudgment interest is available, that is, one for the breach of an obligation not arising from contract? Absent any authority to the contrary, the committee believes that this is a gatekeeper role for the court.

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<sup>4</sup> Civil Code section 3288 is an 1872 statute, never amended or revised.

<sup>5</sup> The advisory committee has been unable to discern the criteria that the task force used in selecting the verdict forms in which the sentence is included. It is included in most, but not all, common-law torts. It is excluded in most, but not all, statutory claims.

2. On what damages may prejudgment interest be awarded? The California Supreme Court has held that it may not be awarded on noneconomic damages.<sup>6</sup> And, of course, it may not be awarded on future damages. The committee concludes that, implicitly, prejudgment interest may be awarded only on past economic damages.
3. Can and should interest be compounded? The committee found apparently conflicting authority and no clear answer.<sup>7</sup>
4. What are the respective roles of court and jury with regard to the actual computation of the amount of prejudgment interest to be awarded?

With regard to issue 4, above, the California Supreme Court has said:

Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation. Furthermore, the date of loss of the property is usually ascertainable, thus permitting an accurate interest computation.<sup>8</sup>

After numerous failed efforts to draft tools to help the jury with the computation task, a majority of the committee now believes that this language should be treated as suggestive rather than a mandatory delegation of the computation task to the jury. The jury's role should be limited to deciding (1) whether prejudgment interest should be added at all;<sup>9</sup> and (2) any facts needed to do the computation, such as the initial date of loss. The court, not the jury, should do the actual computation.

It is true that the formula  $I=PRT$ —Interest (I) equals Principal (P) times Rate (R) times Time (T)—is superficially simple. P is the amount of past economic damages awarded, and R is the legal rate,<sup>10</sup> but the problem is with T. Each lost paycheck will have a different start date; medical expenses will have been incurred on different dates. The draft worksheet that attempted

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<sup>6</sup> *Greater Westchester Homeowners Assn v. L.A.* (1979) 26 Cal.3d 86, 102–103.

<sup>7</sup> Compare *Douglas v. Westfall* (1952) 113 Cal.App.2d 107, 112 [trustee cannot be charged with compound interest unless s/he has been guilty of some positive misconduct or willful violation of duty; in cases of mere negligence, no more than simple interest can properly be added] and *State v. Day* (1946) 76 Cal.App.2d 536, 554 [general rule is that interest may not be computed on accrued interest unless by special statutory provision or by stipulation of the parties] with *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1588 [jury is vested with discretion to award prejudgment interest under section 3288, including compound interest] and *McNulty v. Copp* (1954) 125 Cal.App.2d 697, 712 [compound interest is properly allowed on a claim for wrongful and fraudulent detention of personal property].

<sup>8</sup> *Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at pp. 102–103.

<sup>9</sup> *King v. Southern Pacific Co.* (1895) 109 Cal.96, 99 [error to instruct jury that it must add prejudgment interest to award of damages].

<sup>10</sup> *Michelson, supra*, 29 Cal.App.4th at p. 1585.

to account for all of the variables was rejected by the majority as too complex to be usable by a jury.

The committee's final decision was not to adopt a firm position on the roles of judge and jury with regard to computation. Rather, the current sentence in the many verdict forms has been revised as follows:

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

The committee could discern no difference between common-law tort claims and claims based on statutes. All are, in the words of Civil Code section 3288, actions "for the breach of an obligation not arising from contract." Therefore, the committee has not only replaced the current prejudgment interest sentence with the new one in the verdict forms that currently include it, but has also added the new sentence to the many noncontract verdict forms that currently do not include it. The result is that 187 verdict forms are affected. VF-400 is included with the new instruction, CACI No. 3935, as an example of the language now included in all 187 verdict forms. Four other verdict forms are proposed for revision for other reasons. The remaining 182 are attached separately at pages 123-645. They all have the same language as VF-400.

### **CACI No. 710: duties of motorists and pedestrians**

A committee member trial judge suggested revising CACI No. 710, currently titled *Duties of Care for Pedestrians and Drivers*. The instruction currently simply states:

The duty to use reasonable care does not require the same amount of caution from drivers and pedestrians. While both drivers and pedestrians must be aware that motor vehicles can cause serious injuries, drivers must use more care than pedestrians.

The judge noted that the authority supporting the instruction is old, mostly predating comparative fault, and that Vehicle Code section 21950 more specifically and in harmony with comparative fault addresses the duties of pedestrians and drivers in crosswalks. She suggested recasting CACI No. 710 as an instruction on the standards of Vehicle Code section 21950.

The committee agreed that current CACI No. 710 really provides no guidance to the jury in a pedestrian-vehicle accident under comparative fault. Further, there was concern that the jury, based on the instruction, might give the driver all or a larger percentage of fault than would otherwise be warranted. The committee agreed that an instruction under Vehicle Code section 21950 would be of more use to a jury, even though it would apply only to crosswalk accidents.

Proposed revised CACI No. 710 has been retitled *Duties of Care for Pedestrians and Drivers in Crosswalk*. While it is presented as a revision of the current instruction, it is in reality a new instruction as nothing of the current instruction remains.

**CACI No. 2505: Retaliation—Essential Factual Elements**

In 2012, an appellate court, in dicta, criticized CACI No. 2505 because it does not have an element requiring retaliatory intent. The court urged the Judicial Council to redraft the instruction and the corresponding special verdict form to clearly state that retaliatory intent is a necessary element of a retaliation claim under the Fair Employment and Housing Act.<sup>11</sup>

The committee carefully considered the court’s suggestion but declined to add the element. The jury in the case was instructed with the then-standard CACI causation element, that the plaintiff’s engaging in protected activity was a motivating reason for the defendant’s adverse employment actions. The committee believed, and continues to believe, that intent is inherent in motivation. Motivation is a reason why somebody acts in a certain way. One is not motivated to act unintentionally. If the employee’s engaging in activity protected by the FEHA is a substantial motivating reason for an employer’s adverse action, then it is implicit that the employer intended to retaliate.

A recent case provides some significant support for the committee’s view. In *Wallace v. County of Stanislaus*,<sup>12</sup> the court held that for disability discrimination, “substantial motivating reason” is the only language required to express an intent to discriminate. In so holding, the court stated:

The phrase “because of” [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of *intent* (*i.e., motivation*) and the connection between that motivation and the decision to treat the disabled person differently. (Emphasis added.)<sup>13</sup>

While the court in *Wallace* emphasized that the intent standard for disability discrimination is not the same as for other discrimination,<sup>14</sup> the court’s equation of intent and motivation supports the view of the committee in rejecting the 2012 court’s suggestion to add a separate intent element. The committee proposes adding a citation to *Wallace* to the Directions for Use where the committee discusses its reasons for rejecting a separate intent element. An excerpt from *Wallace* has also been added to the Sources and Authority.

**CACI No. 2506, Limitation on Remedies—After-Acquired Evidence**

A committee member attorney who represents employees in employment law claims proposed revoking CACI No. 2506. If after a discriminatory employment action, the employer discovers a

<sup>11</sup> See *Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1229–1231.

<sup>12</sup> *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132.

<sup>13</sup> *Wallace, supra*, 245 Cal.App.4th at p. 127.

<sup>14</sup> *Wallace, supra*, 245 Cal.App.4th at p. 122.



valid nondiscriminatory reason why the employee could have been subjected to the action anyway, there is no complete defense to liability, but damages may be reduced.<sup>15</sup> Despite this aspect, the doctrine has been labeled as an “equitable defense.”<sup>16</sup> The attorney’s position was that because the doctrine is an equitable doctrine, the court, not the jury, must ultimately find the facts that constitute the elements in the instruction; any jury fact finding would only be advisory; and therefore, there should not be a CACI instruction on after-acquired evidence.

The committee was not convinced that the after-acquired–evidence rule is really an equitable doctrine. The committee found it noteworthy that in its most recent opinion on the subject, the California Supreme Court avoided using the *equitable* label with after-acquired evidence.<sup>17</sup>

The committee concluded that CACI No. 2506 should not be revoked, but that the question of whether or not it is an equitable doctrine should be raised in the Directions for Use. The position of the attorney advocating revocation, that the court may take the fact-finding role from the jury, has been presented as a possible result should the doctrine truly prove to be an equitable one.

**CACI No. 3103: *Neglect—Essential Factual Elements (elder and dependent adult abuse)***

The committee’s proposal to revise this instruction generated several lengthy comments from attorneys representing elders and dependent adults. This instruction is discussed in some detail under Comments, Alternatives Considered, and Policy Implications, below.

**CACI No. 3511: *Permanent Severance Damages***

A trial judge who is a former member of the committee pointed out that no CACI instruction under the Eminent Domain series addresses temporary severance damages. Temporary severance damages compensate for economic loss incurred to the remainder during the period of construction on the property taken in eminent domain.<sup>18</sup> The judge noted that CACI No. 3511, currently entitled *Severance Damages*, cannot be used without modification for temporary severance damages because element 2 requires that the jury “[d]etermine the fair market value of the remaining property after the . . . proposed project is completed.”

The judge requested that the committee not address temporary severance damages until after her current case in which the need for an instruction arose was final. Further, the committee found that the measure of temporary severance damages was not completely clear from the statutes and cases. Therefore, the possible addition of a new instruction on temporary severance damages has been deferred to the next release cycle. However, the title of CACI No. 3511 is proposed to be

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<sup>15</sup> See *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 428. In the previous release, the committee in recognition of the actual nature of the doctrine, changed the title from *Affirmative Defense* to *Limitation on Remedies*.

<sup>16</sup> See *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173.

<sup>17</sup> See *Salas, supra*, 59 Cal.4th at pp. 428, 432 [referring to unclean hands as an equitable doctrine, but referring to after-acquired evidence as just a “doctrine” [omitting “equitable”]].

<sup>18</sup> *City of Fremont v. Fisher* (2008) 160 Cal.App.4th 666, 676.

changed to *Permanent Severance Damages* and the Directions for Use to note that the instruction is not for use for temporary severance damages.

But in the course of researching the issue of severance damages, the advisory committee noted that the California Supreme Court has held that it is for the jury to determine the threshold issue of whether the taking has actually caused a permanent loss of market value to the remainder, as long as the claim is not speculative, conjectural, or remote.<sup>19</sup> The current instruction does not expressly give the jury this task. The committee therefore proposes revising the instruction to make it clear that it is for the jury to decide whether there has been a loss of market value to the remainder property.

### **Comments, Alternatives Considered, and Policy Implications**

The proposed additions and revisions to *CACI* circulated for comment from July 18 through August 26, 2016. Comments were received from 11 different commentators. Of these, five expressed opposition to any changes to *CACI* No. 3103. No other instruction or verdict form garnered any significant legal opposition.

The committee evaluated all comments and, as a result, revised some of the instructions. A summary of the comments received and the committee’s responses is attached at pages 89–108. The committee’s responses to the comments received on *CACI* No. 3103 are set forth below.

#### **CACI No. 3103: Neglect under Elder Abuse and Dependent Adult Civil Protection Act**

On May 19, 2016, the California Supreme Court decided *Winn v. Pioneer Medical Group, Inc.*,<sup>20</sup> which resolved an issue of statutory construction under the Elder Abuse and Dependent Adult Civil Protection Act (the Act). The court held that the word “care” in the phrase “care or custody” in Welfare and Institutions Code section 15610.57(a)(1) (defining “neglect”) does not apply to medical care provided by a medical professional to an elder on an outpatient basis. Instead, before there is “care” within the meaning of the Act, there must be “a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.”<sup>21</sup>

*CACI* No. 3103, *Neglect—Essential Factual Elements*, is the instruction for claims of neglect under the Act. Element 1 of 3103 currently requires, in the words of the statute, only that the defendant had “care or custody” of the elder or dependent adult. The committee concluded that this language was insufficient in light of *Winn*. The committee proposed, and posted for public comment, a revision to element 1 that would require the defendant to have “a substantial caretaking or custodial relationship with [plaintiff/decedent], involving ongoing responsibility

<sup>19</sup> *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 973.

<sup>20</sup> *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148.

<sup>21</sup> *Id.* at p. 152.

for [his/her] basic needs.” As can be seen from the paragraph above, the revised language was taken directly from the holding of the court in *Winn*.

The committee received seven comments on this proposed revision to CACI No. 3103. Five of these comments argued that nothing in the *Winn* case compelled any changes to the instruction and that the instruction should be left as is.<sup>22</sup> The committee has carefully considered the views of the objecting commentators, but continues to believe that *Winn* requires that element 1 be revised.

One of the objectors’ principal arguments is that the *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to the instruction.<sup>23</sup> The objectors would characterize *Winn* as a narrow holding: that in the context of outpatient medical treatment, in order to be held liable under the Act, it must be established that a health care provider has a caretaking or custodial relationship with the elder or dependent adult.<sup>24</sup>

The committee agrees that this language accurately describes the holding of *Winn*, but the committee does not view it as “narrow.” The court’s objective was to construe the statutory phrase “care or custody,” which is the language of the current instruction. In *Winn*, the court found this language to be unclear and amenable to different constructions.<sup>25</sup> The court then elaborated on what the language means. Leaving “care or custody” in a jury instruction without the addition of the court’s guidance would deny a jury the court’s clarification of the meaning of the phrase. Therefore, the committee believes that element 1 cannot be left as is.

The objectors point out that two earlier California Supreme Court cases have established that the Act may not be used to state a claim for medical malpractice.<sup>26</sup> While this is true, the import of *Winn* is to make it abundantly clear that medical professionals will not be liable for elder abuse, regardless of the setting, unless there is the requisite caretaking or custodial relationship.<sup>27</sup>

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<sup>22</sup> The five objecting commentators are the Consumer Attorneys of California (CAOC); Sanford I. Horowitz, Attorney at Law, Santa Rosa; California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland; Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks, and the Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine. Their letters are attached at pages 108–121. Two of the commentators, Russell S. Balisok, Attorney at Law, Glendale, and the State Bar Litigation Section Jury Instructions Committee, did not object to revising element 1, but suggested additional or different revisions. These two comments are addressed in the attached comment summary.

<sup>23</sup> See, e.g., letter of the Valentine Group, p. 1. The Valentine Group, CAOC, and Moore letters, although not identical, all make the same basic arguments in identical or similar language.

<sup>24</sup> See, e.g., letter of the Valentine Group, p. 1.

<sup>25</sup> *Winn*, *supra*, 63 Cal.4th at pp. 156–157.

<sup>26</sup> See *Delany v. Baker* (1999) 20 Cal.4th 23, and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771.

<sup>27</sup> The facts in *Winn* involved an elder who sought medical care for foot pain as an outpatient at a medical “facility.” It is unclear from the facts how the facility might have differed from a doctors’ office.

The objectors also argue that “the proposed changes do not accurately state the law, and in fact attempt to expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult.”<sup>28</sup> But the committee disagrees with this characterization of *Winn*.

First, as the language for revised element 1 comes directly from the *Winn* holding, the committee is confident that it has accurately stated the law. Further, it is clear from the opinion that the court in *Winn* is not narrowly limiting its holding to medical care provided to an elder or dependent adult in an outpatient setting. The court clearly holds that “[i]t is the nature of the elder or dependent adult’s relationship with the defendant—not the defendant’s professional standing—that makes the defendant potentially liable for neglect.”<sup>29</sup> Therefore, the requirement of a substantial caretaking or custodial relationship is not limited to outpatient medical care, but applies in any elder or dependent adult neglect case.<sup>30</sup>

Next, the objectors argue that “the language used is hopelessly vague and ambiguous, and as such renders the proposed instruction unusable.”<sup>31</sup> The committee does not find any of the language from *Winn* that has been incorporated into element 1 to be vague or ambiguous, nor does the committee fear that the instruction will be unusable.

The objectors first challenge the word “substantial” as used in *Winn* to require a “*substantial* caretaking or custodial relationship.”<sup>32</sup> They point to CACI No. 430, *Causation: Substantial Factor*, as evidence that the word “substantial” requires a particular definition. The committee does not share this concern. It finds the word “substantial” to have a clearly understood meaning in its ordinary everyday context. In contrast, the “substantial factor” test for causation is a very particularized and complex area of the law, which does require further elaboration. But determining whether a relationship is substantial or not is a task well within the grasp of jurors without further definition. The court in *Winn* felt no need to elaborate on the scope of a “substantial” relationship, and neither does the committee.

Next, the objectors challenge the word “ongoing” as used in *Winn* to require “*ongoing* responsibility for one or more basic needs.”<sup>33</sup> They claim that “[t]he use of this term implies a relationship with defendant that is never ending, and will do nothing but confuse jurors as to

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<sup>28</sup> See, e.g., letter of Valentine Group, p. 1.

<sup>29</sup> *Winn, supra*, 63 Cal.4th at pp. 152, 158.

<sup>30</sup> Any significance of a narrow construction is hard to understand. In more conventional situations involving neglect under the Act, such as in a nursing home, or by a relative, or with an employee in-home caretaker, there is no question but that there is a substantial caretaking or custodial relationship. Only in the more limited relationships involving medical professionals might the custodial nature of the relationship be at issue. Indeed the letter from the CANHR notes that “there is unambiguously care and custody as with an in-patient in a hospital or a resident in a nursing home or assisted living facility.”

<sup>31</sup> See, e.g., letter of Valentine Group, p. 1.

<sup>32</sup> *Winn, supra*, 63 Cal.4th at pp. 152, 157.

<sup>33</sup> *Winn, supra*, 63 Cal.4th at p. 152.

what constitutes care or custody.”<sup>34</sup> Again, the court in *Winn* saw no need to further refine or avoid the term “ongoing,” and neither does the committee. The committee is confident that jurors will understand that an “ongoing” responsibility is one that occurs over a period of time. The committee has no fear that a jury will require the responsibilities to be never-ending.

Next, in the context of arguing that the proposed language misstates the law, the objectors challenge the meaning of “basic needs.” They note that in *Winn*, the court elaborates on what constitutes “basic needs” with the explanation that they are those things “that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.”<sup>35</sup> The objectors do not argue that this language should be added to the instruction; rather they assert it as evidence that the instruction does not reflect an accurate statement of the law. While the committee does not view the omission of this language as indicative of legal error, it does find value in this additional explanation of “basic needs” and has added it to element 1.<sup>36</sup>

Finally, the objectors propose a change to proposed revisions to the Directions for Use that present the holding in *Winn*. The paragraph as proposed to be revised states:

[T]he Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship with the elder patient, involving ongoing responsibility for one or more basic needs. (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152 [202 Cal.Rptr.3d 447, 370 P.3d 1011].)

The objectors would limit the scope of this exclusion by adding an introductory clause: “In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist, . . . .” As noted above, the committee does not read *Winn* as narrowly limited to its facts.

### **No alternatives considered**

Rule 2.1050 of the California Rules of Court requires the committee to update, amend, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. Proposed new and revised instructions are presented semiannually to ensure that the instructions remain clear, accurate, current, and complete; therefore, the advisory committee did not consider any alternative actions.

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<sup>34</sup> See, e.g., letter of Valentine Group, p. 3.

<sup>35</sup> *Winn, supra*, 63 Cal.4th at pp. 155, 158.

<sup>36</sup> Commentator Balisok suggested labeling the factors to be considered as evidence of neglect in element 3 of the instruction as “basic needs.” The committee finds this to be a good suggestion and has made this revision.

## **Implementation Requirements, Costs, and Operational Impacts**

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will publish the 2017 edition of CACI and pay royalties to the Judicial Council. Other licensing agreements with other publishers provide additional royalties.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the Judicial Council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the Judicial Council provides a broad public license for their noncommercial use and reproduction.

## **Attachments**

1. Full text of *CACI* instructions, at pages 13–88
2. Summary of responses to public comments, at pages 89-108
3. Comment letters opposing changes to CACI No. 3103:
  - a. Consumer Attorneys of California, by Jacqueline Serna, Legislative Counsel, at pages 109–110
  - b. Sanford I. Horowitz, Attorney at Law, Santa Rosa, at pages 111-112
  - c. California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland, at pages 113–114
  - d. Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks, at pages 115-118
  - e. Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine, at pages 119-122
4. Additional 182 verdict forms with the same change shown in CACI No. VF-400, at pages 123-645

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### 107. Witnesses

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A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness ~~did not tell the truth~~~~has deliberately testified untruthfully~~—about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness ~~did not tell the truth~~~~testified untruthfully~~ about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

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*New September 2003; Revised April 2004, June 2005, April 2007, December 2012, June 2015. December 2016*

#### Directions for Use

This instruction may be given as an introductory instruction or as a concluding instruction after trial. (See CACI No. 5003, *Witnesses*.)

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL****Sources and Authority**

- Role of Jury. Evidence Code section 312.
- Considerations for Evaluating the Credibility of Witnesses. Evidence Code section 780.
- Direct Evidence of Single Witness Sufficient. Evidence Code section 411.
- “It should certainly not be of importance to tell the ordinary man of the world that he should distrust the statements of a witness whom he believes to be a liar.” (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671 [288 P. 834].)

***Secondary Sources***

7 Witkin, California Procedure (5th ed. 2008) Trial, § 281

1A California Trial Guide, Unit 22, *Rules Affecting Admissibility of Evidence*, § 22.30 (Matthew Bender)

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.122 (Matthew Bender)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

## 303. Breach of Contract—Essential Factual Elements

To recover damages from *[name of defendant]* for breach of contract, *[name of plaintiff]* must prove all of the following:

1. That *[name of plaintiff]* and *[name of defendant]* entered into a contract;
2. That *[name of plaintiff]* did all, or substantially all, of the significant things that the contract required *[him/her/it]* to do;

[or]

2. That *[name of plaintiff]* was excused from having to *[specify things that plaintiff did not do, e.g., obtain a guarantor on the contract];*
3. That *[specify occurrence of all conditions required by the contract for [name of defendant]’s performance, e.g., the property was rezoned for residential use];*

[or]

3. That *[specify condition(s) that did not occur]* [was/were] [waived/excused];

4. That *[name of defendant]* failed to do something that the contract required *[him/her/it]* to do; **and**

[or]

4. That *[name of defendant]* did something that the contract prohibited *[him/her/it]* from doing; **and**

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

6. That ~~by~~ *[name of defendant]*’s breach of contract **was a substantial factor in causing [name of plaintiff]’s harm.**

*New September 2003; Revised April 2004, June 2006, December 2010, June 2011, June 2013, June 2015, December 2016*

#### Directions for Use

Read this instruction in conjunction with CACI No. 300, *Breach of Contract—Introduction*.

Optional elements 2 and 3 both involve conditions precedent. A “condition precedent” is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

or the contractual duty arises. (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1147 [180 Cal.Rptr.3d 683].) Element 2 involves the first kind of condition precedent; an act that must be performed by one party before the other is required to perform. Include the second option if the plaintiff alleges that he or she was excused from having to perform some or all of the contractual conditions.

Not every breach of contract by the plaintiff will relieve the defendant of the obligation to perform. The breach must be *material*; element 2 captures materiality by requiring that the plaintiff have done the significant things that the contract required. Also, the two obligations must be *dependent*, meaning that the parties specifically bargained that the failure to perform the one relieves the obligation to perform the other. While materiality is generally a question of fact, whether covenants are dependent or independent is a matter of construing the agreement. (*Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277–279 [120 Cal.Rptr.3d 893].) If there is no extrinsic evidence in aid of construction, the question is one of law for the court. (*Verdier v. Verdier* (1955) 133 Cal.App.2d 325, 333 [284 P.2d 94].) Therefore, element 2 should not be given unless the court has determined that dependent obligations are involved. If parol evidence is required and a dispute of facts is presented, additional instructions on the disputed facts will be necessary. (See *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395 [75 Cal.Rptr.3d 333, 181 P.3d 142].)

Element 3 involves the second kind of condition precedent; an uncertain event that must happen before contractual duties are triggered. Include the second option if the plaintiff alleges that the defendant agreed to perform even though a condition did not occur. For reasons that the occurrence of a condition may have been excused, see the Restatement Second of Contracts, section 225, Comment b. See also CACI No. 321, *Existence of Condition Precedent Disputed*, CACI No. 322, *Occurrence of Agreed Condition Precedent*, and CACI No. 323, *Waiver of Condition Precedent*.

Element 6 states the test for causation in a breach of contract action: whether the breach was a substantial factor in causing the damages. (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 909 [28 Cal.Rptr.3d 894].) In the context of breach of contract, it has been said that the term “substantial factor” has no precise definition, but is something that is more than a slight, trivial, negligible, or theoretical factor in producing a particular result. (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 871–872 [63 Cal.Rptr.3d 514]; see CACI No. 430, *Causation—Substantial Factor, applicable to negligence actions.*)

Equitable remedies are also available for breach. “As a general proposition, ‘[t]he jury trial is a matter of right in a civil action at law, but not in equity. [Citations.]’ ” (*C & K Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 8 [151 Cal.Rptr. 323, 587 P.2d 1136]; *Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 524 [154 Cal.Rptr. 164].) However, juries may render advisory verdicts on these issues. (*Raedeke v. Gibraltar Savings & Loan Assn.* (1974) 10 Cal.3d 665, 670–671 [111 Cal.Rptr. 693, 517 P.2d 1157].)

### **Sources and Authority**

- Contract Defined. Civil Code section 1549.

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- “A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing.” (*Robinson v. Magee* (1858) 9 Cal. 81, 83.)
- “To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff.” (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [169 Cal.Rptr.3d 475].)
- “Implicit in the element of damage is that the defendant’s breach *caused* the plaintiff’s damage.” (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352 [90 Cal.Rptr.3d 589], original italics.)
- “It is elementary a plaintiff suing for breach of contract must prove it has performed all conditions on its part or that it was excused from performance. Similarly, where defendant’s duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired.” (*Consolidated World Investments, Inc., v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380 [11 Cal.Rptr.2d 524], internal citation omitted.)
- “When a party’s failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract. Normally the question of whether a breach of an obligation is a material breach, so as to excuse performance by the other party, is a question of fact. Whether a partial breach of a contract is material depends on ‘the importance or seriousness thereof and the probability of the injured party getting substantial performance.’ ‘A material breach of one aspect of a contract generally constitutes a material breach of the whole contract.’ ” (*Brown, supra*, 192 Cal.App.4th at pp. 277–278, internal citations omitted.)
- “Whether breach of the agreement not to molest bars [plaintiff]’s recovery of agreed support payments raises the question whether the two covenants are dependent or independent. If the covenants are independent, breach of one does not excuse performance of the other. (*Verdier, supra*, 133 Cal.App.2d at p. 334.)
- “The determination of whether a promise is an independent covenant, so that breach of that promise by one party does not excuse performance by the other party, is based on the intention of the parties as deduced from the agreement. The trial court relied upon parol evidence to determine the content and interpretation of the fee-sharing agreement between the parties. Accordingly, that determination is a question of fact that must be upheld if based on substantial evidence.” (*Brown, supra*, 192 Cal.App.4th at p. 279, internal citation omitted.)
- “The wrongful, i.e., the unjustified or unexcused, failure to perform a contract is a *breach*. Where the nonperformance is legally justified, or excused, there may be a failure of consideration, but not a breach.” (1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847, original italics, internal citations omitted.) “Ordinarily, a breach is the result of an intentional act, but *negligent performance* may also constitute a breach, giving rise to alternative contract and tort actions.” (*Ibid.*, original italics.)

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- “b. *Excuse*. The non-occurrence of a condition of a duty is said to be ‘excused’ when the condition need no longer occur in order for performance of the duty to become due. The non-occurrence of a condition may be excused on a variety of grounds. It may be excused by a subsequent promise, even without consideration, to perform the duty in spite of the non-occurrence of the condition. See the treatment of ‘waiver’ in § 84, and the treatment of discharge in §§ 273-85. It may be excused by acceptance of performance in spite of the non-occurrence of the condition, or by rejection following its non-occurrence accompanied by an inadequate statement of reasons. See §§ 246-48. It may be excused by a repudiation of the conditional duty or by a manifestation of an inability to perform it. See § 255; §§ 250-51. It may be excused by prevention or hindrance of its occurrence through a breach of the duty of good faith and fair dealing (§ 205). See § 239. And it may be excused by impracticability. See § 271. These and other grounds for excuse are dealt with in other chapters of this Restatement. This Chapter deals only with one general ground, excuse to avoid forfeiture. See § 229.” (Rest.2d of Contracts, § 225.)
- “ “Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.” [Citation.] ” (*Stephens & Stephens XII, LLC, supra*, 231 Cal. App. 4th at p. 1144.)
- “ ‘Causation of damages in contract cases, as in tort cases, requires that the damages be proximately caused by the defendant's breach, and that their causal occurrence be at least reasonably certain.’ A proximate cause of loss or damage is something that is a substantial factor in bringing about that loss or damage.” (*U.S. Ecology, Inc., supra*, 129 Cal.App.4th at p. 909, internal citations omitted.)
- “An essential element of [breach of contract] claims is that a defendant's alleged misconduct was the cause in fact of the plaintiff's damage. [¶] The causation analysis involves two elements. ‘ ‘One is cause in fact. An act is a cause in fact if it is a necessary antecedent of an event.’ [Citation.]’ The second element is proximate cause. ‘ ‘[P]roximate cause ‘is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.’ ” ’ ” (*Tribeca Companies, LLC v. First American Title Ins. Co. (2015)* 239 Cal.App.4th 1088, 1102–1103 [192 Cal.Rptr.3d 354], footnote and internal citation omitted.)

### ***Secondary Sources***

1 Witkin, Summary of California Law (10th ed. 2005) Contracts, § 847

13 California Forms of Pleading and Practice, Ch. 140, *Contracts*, § 140.50 (Matthew Bender)

5 California Points and Authorities, Ch. 50, *Contracts*, § 50.10 et seq. (Matthew Bender)

2 Matthew Bender Practice Guide: California Contract Litigation, Ch. 22, *Suing or Defending Action for Breach of Contract*, 22.03–22.50

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**706. Basic Speed Law (Veh. Code, § 22350)**

**A person must drive at a reasonable speed. Whether a particular speed is reasonable depends on the circumstances such as traffic, weather, visibility, and road conditions. Drivers must not drive so fast that they create a danger to people or property.**

**If [name of plaintiff/defendant] has proved that [name of defendant/plaintiff] was not driving at a reasonable speed at the time of the accident, then [name of defendant/plaintiff] was negligent.**

*New September 2003; Revised December 2016*

**Directions for Use**

Driving at an unreasonable speed is negligence per se (see *Hert v. Firestone Tire & Rubber Co.* (1935) 4 Cal.App.2d 598, 599 [41 P.2d 369]), which establishes the first element of CACI No. 400, *Negligence—Essential Factual Elements*. Plaintiff must still prove the other two elements of harm and causation. (See CACI No. 430, *Causation: Substantial Factor*.)

**Sources and Authority**

- Speeding. Vehicle Code section 22350.
- “The so-called basic speed law is primarily a regulation of the conduct of the operators of vehicles. They are bound to know the conditions which dictate the speeds at which they can drive with a reasonable degree of safety. They know, or should know, their cars and their own ability to handle them, and especially their ability to come to a stop at different speeds and under different conditions of the surface of the highway.” (*Wilding v. Norton* (1957) 156 Cal.App.2d 374, 379 [319 P.2d 440].)
- “Whether Vehicle Code section 22350 has been violated is a question of fact.” (*Leighton v. Dodge* (1965) 236 Cal.App.2d 54, 57 [45 Cal.Rptr. 820], internal citation omitted.)
- “A number of cases have held that it is proper to give an instruction in the terms of this section and to inform the jury that a violation of the statute is negligence.” (*Hardin v. San Jose City Lines, Inc.* (1953) 41 Cal.2d 432, 438 [260 P.2d 63].)
- ~~The burden of proving negligence in a civil action is on the party charging negligence, and even if such party has established speed in excess of the applicable prima facie limit the party must establish negligence under the circumstances. (*Faselli v. Southern Pacific Co.* (1957) 150 Cal.App.2d 644, 648 [310 P.2d 698].)~~
- Compliance with the posted speed law does not negate negligence as a matter of law. (*Maxwell v. Colburn* (1980) 105 Cal.App.3d 180, 186 [163 Cal.Rptr. 912].)
- ~~Drivers who are driving at the maximum speed limit on a multi-lane freeway are not under a duty to~~

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~~move their vehicles to the right into the next slower lane when another vehicle approaches them from behind in the same lane at a speed in excess of the posted maximum speed limit. (*Monreal v. Tobin* (1998) 61 Cal.App.4th 1337, 1354-1355 [72 Cal.Rptr.2d 168].)~~

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 878

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.16

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.63[3][a] (Matthew Bender)



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**710. Duties of Care for Pedestrians and Drivers in Crosswalk (Veh. Code, § 21950)**


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~~The duty to use reasonable care does not require the same amount of caution from drivers and pedestrians. While both drivers and pedestrians must be aware that motor vehicles can cause serious injuries, drivers must use more care than pedestrians.~~

A driver of a vehicle must yield the right-of-way to a pedestrian who is crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection. When approaching a pedestrian who is within any marked or unmarked crosswalk, a driver must use reasonable care and must reduce his or her speed or take any other action necessary to ensure the safety of the pedestrian.

A pedestrian must also use reasonable care for his or her own safety. A pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. A pedestrian also must not unnecessarily stop or delay traffic while in a marked or unmarked crosswalk.

The failure of a pedestrian to exercise reasonable care does not relieve a driver of a vehicle from the duty of exercising reasonable care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

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*New September 2003; Revised December 2016*

#### Directions for Use

This instruction sets forth the respective duties of drivers and pedestrians in a crosswalk. (See Veh. Code, § 21950.) Crosswalk accidents often present a comparative negligence analysis based on the statutory duties of both parties.

#### **Sources and Authority**

- Right-of-Way at Crosswalks. Vehicle Code section 21950.
- Vehicles Stopped for Pedestrians at Crosswalks. Vehicle Code section 21951.
- ~~Driving is not considered a highly dangerous activity, though it may require a specific instruction: “Driving a motor vehicle may be sufficiently dangerous to warrant special instructions, but it is not so hazardous that it always requires ‘extreme caution.’ ” (Menchaca v. Helms Bakeries, Inc. (1968) 68 Cal.2d 535, 544 [67 Cal.Rptr. 775, 439 P.2d 903], internal citations omitted.)~~
- “When the pedestrian *suddenly* leaves his place of safety, the vehicle must be so close as to constitute an *immediate hazard*. Such wording [in Veh. Code, § 21950] indicates the statute was intended to apply to those situations where a pedestrian unexpectedly asserts his right-of-way in an intersection at a time when the vehicle is so close that it is virtually impossible to avoid an accident. Typical situations include when a pedestrian steps, jumps, walks or runs directly in front of a vehicle

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travelling in lanes which are adjacent to the curb or other place of safety occupied by the pedestrian. Under such circumstances, the vehicle would most certainly constitute an immediate hazard to the pedestrian.” (*Spann v. Ballesty* (1969) 276 Cal.App.2d 754, 761 [81 Cal.Rptr. 229], original italics.)

- “It is undisputed that defendant did not yield the right of way to plaintiff. Such failure constitutes a violation of the statute and negligence as a matter of law in the absence of reasonable explanation for defendant's conduct.” (*Schmitt v. Henderson* (1969) 1 Cal.3d 460, 463 [82 Cal.Rptr 502, 462 P.2d 30].)
- “When, as here, each motorist has acted reasonably and the pedestrian has failed to exercise due care for her own safety, the law of this state does not permit the technical violation of the pedestrian's right of way statute to impose negligence on the motorists as a matter of law. The statute creates a preferential, but not absolute, right in favor of the pedestrian who is still under a duty to exercise ordinary care.” (*Byrne v. City and County of San Francisco* (1980) 113 Cal.App.3d 731, 742 [170 Cal.Rptr. 302], internal citation omitted.)
- “While it is the duty of both the driver of a motor vehicle and a pedestrian, using a public roadway, to exercise ordinary care, that duty does not require necessarily the same amount of caution from each. The driver of a motor vehicle, when ordinarily careful, will be alertly conscious of the fact that he is in charge of a machine capable of projecting into serious consequences any negligence of his own. Thus his caution must be adequate to that responsibility as related to all the surrounding circumstances. A pedestrian, on the other hand, has only his own physical body to manage and with which to set in motion a cause of injury. While, usually, that fact limits his capacity to cause injury, as compared with a vehicle driver, still, in exercising ordinary care, he, too, will be alertly conscious of the mechanical power acting, or that may act, on the public roadway, and of the possible, serious consequences from any conflict between himself and such forces. And the caution required of him is measured by the possibilities of injury apparent to him in the conditions at hand, or that would be apparent to a person of ordinary prudence in the same position” Failure to give an instruction upon request on the relative duties of the driver and the pedestrian has been held to be error. (*Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 75–76, 81 [265 P.2d 513] [proposed jury instruction correctly stated the lawerror not prejudicial in this case].)
- ~~In *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314, 315 [70 P.2d 1002], the court held it was error to refuse to instruct the jury that “the plaintiff and the defendant were both chargeable only with the exercise of ordinary care, but a greater amount of such care was required of the defendant at the time of the accident in question by reason of the fact that he was driving and operating an automobile, which is an instrumentality capable of inflicting serious and often fatal injuries upon others using the highway.”~~
- ~~The purpose of instructions concerning the relative standards of care for pedestrians and drivers is “to inform the jury that the elements of action constituting conduct which qualifies as ordinary care are those commensurable with the responsibility involved and depend upon the character of the instrumentality being used or the nature of the act which is being performed, all as related to the surrounding circumstances.”~~ (*Cucinella, supra*, 42 Cal.2d at p. 80.)

**Secondary Sources**

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6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 881, 882, 885

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 4.72-4.73

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, §§ 20.10-20.12 (Matthew Bender)

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

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

**2505. Retaliation—Essential Factual Elements (Gov. Code, § 12940(h))**

*[Name of plaintiff]* **claims that** *[name of defendant]* **retaliated against [him/her] for** *[describe activity protected by the FEHA]*. **To establish this claim, [name of plaintiff] must prove all of the following:**

1. **That** *[name of plaintiff]* *[describe protected activity]*;
2. **[That** *[name of defendant]* **[discharged/demoted/[specify other adverse employment action]]** *[name of plaintiff]*;

**[or]**

**[That** *[name of defendant]* **subjected** *[name of plaintiff]* **to an adverse employment action;**

**[or]**

**[That** *[name of plaintiff]* **was constructively discharged;**

3. **That** *[name of plaintiff]*'s *[describe protected activity]* **was a substantial motivating reason for** *[name of defendant]*'s **[decision to [discharge/demote/[specify other adverse employment action]]** *[name of plaintiff]*/**conduct**;
4. **That** *[name of plaintiff]* **was harmed; and**
5. **That** *[name of defendant]*'s **†decision to [discharge/demote/[specify other adverse employment action]]** **‡** *[name of plaintiff]* **was a substantial factor in causing [him/her] harm.**

***[[Name of plaintiff] does not have to prove [discrimination/harassment] in order to be protected from retaliation. If [he/she] reasonably believed that [name of defendant]'s conduct was unlawful/requested a [disability/religious] accommodation, [he/she] may prevail on a retaliation claim even if [he/she] does not present, or prevail on, a separate claim for [discrimination/harassment/[other]].]***

*New September 2003; Revised August 2007, April 2008, October 2008, April 2009, June 2010, June 2012, December 2012, June 2013, June 2014, June 2016, December 2016*

#### **Directions for Use**

In elements 1 and 3, describe the protected activity in question. Government Code section 12940(h) provides that it is unlawful to retaliate against a person “because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under [the FEHA].” It is also unlawful to retaliate or otherwise discriminate against a person for requesting an accommodation for religious practice or

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disability, regardless of whether the request was granted. (Gov. Code, § 12940(l)(4) [religious practice], (m)(2) [disability].)

Read the first option for element 2 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” *Explained*, if whether there was an adverse employment action is a question of fact for the jury. For example, the case may involve a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. (See *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1052–1056 [32 Cal.Rptr.3d 436, 116 P.3d 1123].) Give both the first and second options if the employee presents evidence supporting liability under both a sufficient-single-act theory or a pattern-of-harassment theory. (See, e.g., *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 423–424 [69 Cal.Rptr.3d 1].) Also select “conduct” in element 3 if the second option or both the first and second options are included for element 2.

Retaliation in violation of the FEHA may be established by constructive discharge; that is, that the employer intentionally created or knowingly permitted working conditions to exist that were so intolerable that a reasonable person in the employee’s position would have had no reasonable alternative other than to resign. (See *Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1253 [76 Cal.Rptr.3d 632].) If constructive discharge is alleged, give the third option for element 2 and also give CACI No. 2510, “*Constructive Discharge*” *Explained*. Also select “conduct” in element 3 if the third option is included for element 2.

Element 3 requires that the protected activity be a substantial motivating reason for the retaliatory acts. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; *Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758]; see also CACI No. 2507, “*Substantial Motivating Reason*” *Explained*.)

Note that there are two causation elements. There must be a causal link between the retaliatory animus and the adverse action (see element 3), and there must be a causal link between the adverse action and damages (see element 5). (See *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713 [81 Cal.Rptr.3d 406].)

This instruction has been criticized in dictum because it is alleged that there is no element requiring retaliatory intent. (See *Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1229–1231 [136 Cal.Rptr.3d 472].) The court urged the Judicial Council to redraft the instruction and the corresponding special verdict form so as to clearly state that retaliatory intent is a necessary element of a retaliation claim under FEHA.

–The jury in the case was instructed per element 3 “that Richard Joaquin's reporting that he had been sexually harassed was a motivating reason for the City of Los Angeles' decision to terminate Richard Joaquin's employment or deny Richard Joaquin promotion to the rank of sergeant.”–The committee believes that the instruction as given is correct for the intent element in a retaliation case. (*Cf. Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132 [199 Cal.Rptr.3d 462] [for disability discrimination, “substantial motivating reason” is only language required to express intent].) However, in cases such as *Joaquin* that involve allegations of a prohibited motivating reason (based on a report of

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sexual harassment) and a permitted motivating reason (based on a good faith belief that the report was falsified), the instruction may need to be modified to make it clear that plaintiff must prove that defendant acted based on the *prohibited* motivating reason and not the *permitted* motivating reason.

**Sources and Authority**

- Retaliation Prohibited Under Fair Employment and Housing Act. Government Code section 12940(h).
- Retaliation for Requesting Reasonable Accommodation for Religious Practice and Disability Prohibited. Government Code section 12940(l)(4), (m)(2).
- “Person” Defined Under Fair Employment and Housing Act. Government Code section 12925(d).
- Prohibited Retaliation. Title 2 California Code of Regulations section 11021.
- “[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action. Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation ‘ ‘ ‘drops out of the picture,’ ’ ’ and the burden shifts back to the employee to prove intentional retaliation.” (*Yanowitz, supra*, 36 Cal.4th at p. 1042, internal citations omitted.)
- “Actions for retaliation are ‘inherently fact-driven’; it is the jury, not the court, that is charged with determining the facts.” (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 299 [156 Cal.Rptr.3d 851].)
- “It is well established that a plaintiff in a retaliation case need only prove that a retaliatory animus was at least a substantial or motivating factor in the adverse employment decision.” (*George v. California Unemployment Ins. Appeals Bd.* (2009) 179 Cal.App.4th 1475, 1492 [102 Cal.Rptr.3d 431].)
- “Retaliation claims are inherently fact-specific, and the impact of an employer’s action in a particular case must be evaluated in context. Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim.” (*Yanowitz, supra*, 36 Cal.4th at p. 1052.)
- “Contrary to [defendant]’s assertion that it is improper to consider collectively the alleged retaliatory acts, there is no requirement that an employer’s retaliatory acts constitute one swift blow, rather than a series of subtle, yet damaging, injuries. Enforcing a requirement that each act separately constitute an adverse employment action would subvert the purpose and intent of the statute.” (*Yanowitz, supra*, 36 Cal.4th at pp. 1055–1056, internal citations omitted.)

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- “Clearly, section 12940, subdivision (h) encompasses a broad range of protected activity. An employee need not use specific legal terms or buzzwords in opposing discrimination. Nor is it necessary for an employee to file a formal charge. The protected activity element may be established by evidence that the plaintiff threatened to file a discrimination charge, by a showing that the plaintiff mistakenly, but reasonably and sincerely believed he was opposing discrimination, or by evidence an employer believed the plaintiff was a potential witness in another employee's FEHA action.” (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 652 [163 Cal.Rptr.3d 392], internal citations and footnote omitted.)
- “Moreover, [defendant]’s actions had a substantial and material impact on the conditions of employment. The refusal to promote [plaintiff] is an adverse employment action under FEHA. There was also a pattern of conduct, the totality of which constitutes an adverse employment action. This includes undeserved negative job reviews, reductions in his staff, ignoring his health concerns and acts which caused him substantial psychological harm.” (*Wysinger, supra*, 157 Cal.App.4th at p. 424, internal citations omitted.)
- “A long period between an employer’s adverse employment action and the employee’s earlier protected activity may lead to the inference that the two events are not causally connected. But if between these events the employer engages in a pattern of conduct consistent with a retaliatory intent, there may be a causal connection.” (*Wysinger, supra*, 157 Cal.App.4th at p. 421, internal citation omitted.)
- “Both direct and circumstantial evidence can be used to show an employer’s intent to retaliate. ‘Direct evidence of retaliation may consist of remarks made by decisionmakers displaying a retaliatory motive.’ Circumstantial evidence typically relates to such factors as the plaintiff’s job performance, the timing of events, and how the plaintiff was treated in comparison to other workers.” (*Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th 1142, 1153 [119 Cal.Rptr.2d 131], internal citations omitted.)
- “The retaliatory motive is ‘proved by showing that plaintiff engaged in protected activities, that his employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter.’ ‘The causal link may be established by an inference derived from circumstantial evidence, “such as the employer’s knowledge that the [employee] engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision.” ’ ” (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 615 [262 Cal.Rptr. 842], internal citations omitted.)
- “[A]n employer generally can be held liable for the retaliatory actions of its supervisors.” (*Wysinger, supra*, 157 Cal.App.4th at p. 420.)
- “Plaintiff, although a partner, is a person whom section 12940, subdivision (h) protects from retaliation for opposing the partnership-employer’s harassment against those employees.” (*Fitzsimons v. California Emergency Physicians Medical Group* (2012) 205 Cal.App.4th 1423, 1429 [141 Cal.Rptr.3d 265].)

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- “[A]n employer may be found to have engaged in an adverse employment action, and thus liable for retaliation under section 12940(h), ‘by permitting ... fellow employees to punish [him] for invoking [his] rights.’ We therefore hold that an employer may be held liable for coworker retaliatory conduct if the employer knew or should have known of coworker retaliatory conduct and either participated and encouraged the conduct, or failed to take reasonable actions to end the retaliatory conduct.” (*Kelley v. The Conco Cos.* (2011) 196 Cal.App.4th 191, 213 [126 Cal.Rptr.3d 651], internal citation omitted.)
- “[T]he employer is liable for retaliation under section 12940, subdivision (h), but nonemployer individuals are not personally liable for their role in that retaliation.” (*Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173 [72 Cal.Rptr.3d 624, 177 P.3d 232].)
- “[U]nder certain circumstances, a retaliation claim may be brought by an employee who has complained of or opposed conduct, even when a court or jury subsequently determines the conduct actually was not prohibited by the FEHA. Indeed, this precept is well settled. An employee is protected against retaliation if the employee reasonably and in good faith believed that what he or she was opposing constituted unlawful employer conduct such as sexual harassment or sexual discrimination.” (*Miller v. Department of Corr.* (2005) 36 Cal.4th 446, 473–474 [30 Cal.Rptr.3d 797, 115 P.3d 77], internal citations omitted.)
- “ ‘The legislative purpose underlying FEHA's prohibition against retaliation is to prevent employers from deterring employees from asserting good faith discrimination complaints ... .’ Employer retaliation against employees who are believed to be prospective complainants or witnesses for complainants undermines this legislative purpose just as effectively as retaliation after the filing of a complaint. To limit FEHA in such a way would be to condone ‘an absurd result’ that is contrary to legislative intent. We agree with the trial court that FEHA protects employees against preemptive retaliation by the employer.” (*Steele, supra*, 162 Cal.App.4th at p. 1255, internal citations omitted.)
- “ ‘The plaintiff's burden is to prove, by competent evidence, that the employer's proffered justification is mere pretext; i.e., that the presumptively valid reason for the employer's action was in fact a coverup. ... In responding to the employer's showing of a legitimate reason for the complained-of action, the plaintiff cannot “ ‘simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee “ ‘must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them “unworthy of credence,” ... and hence infer “that the employer did not act for the [asserted] non-discriminatory reasons.” ’ ’ ’ ’ ” (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1409 [194 Cal.Rptr.3d 689].)
- “Government Code section 12940, subdivision (h), does not shield an employee against termination or lesser discipline for either lying or withholding information during an employer's internal investigation of a discrimination claim. In other words, public policy does not protect deceptive activity during an internal investigation. Such conduct is a legitimate reason to terminate an at-will employee.” (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1528 [152 Cal.Rptr.3d 154], footnotes omitted.)
- “Although appellant does not argue she was constructively discharged, such a claim is not necessary



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to find unlawful retaliation.” (*McCoy, supra*, 216 Cal.App.4th at p. 301.)

- “The phrase ‘because of’ [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of intent (i.e., motivation) and the connection between that motivation and the decision to treat the disabled person differently. This ambiguity is closely related to [defendant]’s argument that it is liable only if motivated by discriminatory animus. [¶] The statutory ambiguity in the phrase ‘because of’<sup>2</sup> was resolved by our Supreme Court about six months after the first jury trial [in *Harris, supra*, 56 Cal.4th at p. 203].” (*Wallace, supra*, 245 Cal.App.4th at p. 127.)

***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 922, 940, 941

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:680–7:841 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.83–2.88

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.131 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.37, 115.94 (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 2:74–2:75 (Thomson Reuters)

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## 2506. Limitation on Remedies—After-Acquired Evidence

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[Name of defendant] claims that [he/she/it] would have discharged [name of plaintiff] anyway if [he/she/it] had known that [name of plaintiff] [describe misconduct]. You must decide whether [name of defendant] has proved all of the following:

1. That [name of plaintiff] [describe misconduct];
  2. That [name of plaintiff]’s misconduct was sufficiently severe that [name of defendant] would have discharged [him/her] because of that misconduct alone had [name of defendant] known of it; and
  3. That [name of defendant] would have discharged [name of plaintiff] for [his/her] misconduct as a matter of settled company policy.
- 

New September 2003; Revised June 2016, December 2016

#### Directions for Use

~~The doctrine of after-acquired evidence refers to an employer's discovery, after an allegedly wrongful termination of employment or refusal to hire, of information that would have justified a lawful termination or refusal to hire. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 428 [173 Cal.Rptr.3d 689, 327 P.3d 797].) The after-acquired evidence doctrine is an equitable defense that is determined by the court based on the facts of the case.~~

~~There is some uncertainty as to whether or not it is an equitable doctrine. (Compare *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173 [104 Cal.Rptr.2d 95] [doctrine is the basis for an equitable defense related to the traditional defense of “unclean hands,” italics added] with *Salas, supra*, 59 Cal.4th at p. 428 [omitting “equitable”].) If it is an equitable doctrine, then the fact finding in the elements of the instruction would be only advisory to the court, or the elements could be found by the court itself as the trier of fact. (See *Thompson, supra*, 86 Cal.App.4th at p. 1173; see also *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156 [85 Cal.Rptr.3d 337] [jury’s factual findings are purely advisory because, on equitable causes of action, the judge is the proper fact finder].) This instruction assists the judge if the facts are in dispute. (See, e.g., *Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1173 [104 Cal.Rptr.2d 95].)~~

~~-After-acquired evidence is not a complete defense to liability, but may foreclose otherwise available remedies. (*Salas, supra, v. Sierra Chemical Co.* (2014) 59 Cal.4th at pp. 407, 430–431 [173 Cal.Rptr.3d 689, 327 P.3d 797].) It is not clear if there is a role for the jury in deciding what remedies are available.~~

After-acquired evidence cases must be distinguished from mixed motive cases in which the employer at the time of the employment action has two or more motives, at least one of which is unlawful. (See *Salas supra*, 59 Cal.4th at p. 430; CACI No. 2512, *Limitation on Remedies—Same Decision*.)

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**Sources and Authority**

- “In general, the after-acquired-evidence doctrine shields an employer from liability or limits available relief where, after a termination, the employer learns for the first time about employee wrongdoing that would have led to the discharge in any event. Employee wrongdoing in after-acquired-evidence cases generally falls into one of two categories: (1) misrepresentations on a resume or job application; or (2) posthire, on-the-job misconduct.” (*Camp v. Jeffer, Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, 632 [41 Cal.Rptr.2d 329].)
- “The after-acquired-evidence doctrine serves as a complete or partial defense to an employee’s claim of wrongful discharge ... To invoke this doctrine, ‘... the employer must establish “that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it” ... [T]he employer ... must show that such a firing would have taken place as a matter of “settled” company policy.’ ” (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842, 845-846 [77 Cal.Rptr.2d 12], internal citations omitted.)
- “Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge.” (*McKennon v. Nashville Banner Publishing Co.* (1995) 513 U.S. 352, 362-363 [115 S.Ct. 879, 130 L.Ed.2d 852].)
- “Courts must tread carefully in applying the after-acquired-evidence doctrine to discrimination claims ... . Where, as here, the discriminatory conduct was pervasive during the term of employment, therefore, it would not be sound public policy to bar recovery for injuries suffered while employed. In applying the after-acquired-evidence doctrine, the equities between employer and employee can be balanced by barring all portions of the employment discrimination claim tied to the employee’s discharge.” (*Murillo, supra*, 65 Cal.App.4th at pp. 849–850.)
- “As the Supreme Court recognized in *McKennon*, the use of after-acquired evidence must ‘take due account of the lawful prerogatives of the employer in the usual course of its business and the corresponding equities that it has arising from the employee’s wrongdoing.’ We appreciate that the facts in *McKennon* ... presented a situation where balancing the equities should permit a finding of employer liability-to reinforce the importance of antidiscrimination laws-while limiting an employee’s damages-to take account of an employer’s business prerogatives. However, the equities compel a different result where an employee who is disqualified from employment by government-imposed requirements nevertheless obtains a job by misrepresenting the pertinent qualifications. In such a situation, the employee should have no recourse for an alleged wrongful termination of employment.” (*Camp, supra*, 35 Cal.App.4th at pp. 637-638, internal citation omitted.)
- “We decline to adopt a blanket rule that material falsification of an employment application is a complete defense to a claim that the employer, while still unaware of the falsification, terminated the employment in violation of the employee’s legal rights.” (*Cooper v. Rykoff-Sexton, Inc.* (1994) 24 Cal.App.4th 614, 617 [29 Cal.Rptr.2d 642].)
- “The doctrine [of after-acquired evidence] is the basis for an equitable defense related to the traditional defense of ‘unclean hands’ ... [¶] In the present case, there were conflicts in the evidence

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concerning respondent's actions, her motivations, and the possible consequences of her actions within appellant's disciplinary system. The trial court submitted those factual questions to the jury for resolution and then used the resulting special verdict as the basis for concluding appellant was not entitled to equitable reduction of the damages award." (*Thompson, supra*, 86 Cal.App.4th at p. 1173.)

- "By definition, after-acquired evidence is not known to the employer at the time of the allegedly unlawful termination or refusal to hire. In after-acquired evidence cases, the employer's alleged wrongful act in violation of the FEHA's strong public policy precedes the employer's discovery of information that would have justified the employer's decision. To allow such after-acquired evidence to be a complete defense would eviscerate the public policies embodied in the FEHA by allowing an employer to engage in invidious employment discrimination with total impunity." (*Salas, supra*, 59 Cal.4th at p. 430.)
- "In after-acquired evidence cases, therefore, both the employee's rights and the employer's prerogatives deserve recognition. The relative equities will vary from case to case, depending on the nature and consequences of any wrongdoing on either side, a circumstance that counsels against rigidity in fashioning appropriate remedies in those actions where an employer relies on after-acquired evidence to defeat an employee's FEHA claims." (*Salas, supra*, 59 Cal.4th at p. 430.)
- "Generally, the employee's remedies should not afford compensation for loss of employment during the period after the employer's discovery of the evidence relating to the employee's wrongdoing. When the employer shows that information acquired after the employee's claim has been made would have led to a lawful discharge or other employment action, remedies such as reinstatement, promotion, and pay for periods after the employer learned of such information would be 'inequitable and pointless,' as they grant remedial relief for a period during which the plaintiff employee was no longer in the defendant's employment and had no right to such employment." (*Salas, supra*, 59 Cal.4th at pp. 430–431.)
- The remedial relief generally should compensate the employee for loss of employment from the date of wrongful discharge or refusal to hire to the date on which the employer acquired information of the employee's wrongdoing or ineligibility for employment. Fashioning remedies based on the relative equities of the parties prevents the employer from violating California's FEHA with impunity while also preventing an employee or job applicant from obtaining lost wages compensation for a period during which the employee or applicant would not in any event have been employed by the employer. In an appropriate case, it would also prevent an employee from recovering any lost wages when the employee's wrongdoing is particularly egregious." (*Salas, supra*, 59 Cal.4th at p. 431, footnote omitted.)

**Secondary Sources**

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 211

[Chin et al., Cal. Practice Guide: Employment Litigation Ch. 7-A, Employment Discrimination—Title VII and the California Fair Employment and Housing Act, ¶¶ 7:930–7:932 \(The Rutter Group\) Chin et al., Cal. Practice Guide: Employment Litigation \(The Rutter Group\) ¶¶ 7:930–7:932, 16:615–16:616, 16:625, 16:635–16:637, 16:647](#)

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Chin et al., Cal. Practice Guide: Employment Litigation Ch. 16-H, *Other Defenses--After-Acquired Evidence of Employee Misconduct*, ¶¶ 16:615–16:616, 16:625, 16:635–16:637, 16:647 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, § 2.107

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.92 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.54[2] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:88 (Thomson Reuters)

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## 2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements

**[Name of plaintiff] claims that [name of defendant] wrongfully discriminated against [him/her] based on [his/her] [history of [a]] [select term to describe basis of limitations, e.g., physical condition]. To establish this claim, [name of plaintiff] must prove all of the following:**

1. That [name of defendant] was [an employer/[other covered entity]];
2. That [name of plaintiff] [was an employee of [name of defendant]/applied to [name of defendant] for a job/[describe other covered relationship to defendant]];
3. That [name of defendant] knew that [name of plaintiff] had [a history of having] [a] [e.g., physical condition] [that limited [insert major life activity]];
4. That [name of plaintiff] was able to perform the essential job duties [with reasonable accommodation for [his/her] [e.g., physical condition]];
5. [That [name of defendant] [discharged/refused to hire/[other adverse employment action]] [name of plaintiff];]

[or]

[That [name of defendant] subjected [name of plaintiff] to an adverse employment action;]

[or]

[That [name of plaintiff] was constructively discharged;]

6. That [name of plaintiff]'s [history of [a]] [e.g., physical condition] was a substantial motivating reason for [name of defendant]'s [decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct];
7. That [name of plaintiff] was harmed; and
8. That [name of defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

**[Name of plaintiff] does not need to prove that [name of defendant] held any ill will or animosity toward [him/her] personally because [he/she] was [perceived to be] disabled. [On the other hand, if you find that [name of defendant] did hold ill will or animosity toward [name of plaintiff] because [he/she] was [perceived to be] disabled, you may consider this fact, along with all the other evidence, in determining whether [name of plaintiff]'s [history of [a]] [e.g., physical condition] was a substantial motivating reason for [name of defendant]'s [decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]/conduct].]**

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*New September 2003; Revised June 2006, December 2007, April 2009, December 2009, June 2010, June 2012, June 2013, December 2014, December 2016*

**Directions for Use**

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

In the introductory paragraph and in elements 3 and 6, select the bracketed language on “history” of disability if the claim of discrimination is based on a history of disability rather than a current actual disability.

For element 1, the court may need to instruct the jury on the statutory definition of “employer” under the FEHA. Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(a)–(d).)

Modify elements 3 and 6 if plaintiff was not actually disabled or had a history of disability, but alleges discrimination because he or she was perceived to be disabled. (See Gov. Code, § 12926(o); see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer].) This can be done with language in element 3 that the employer “treated [*name of plaintiff*] as if [he/she] ...” and with language in element 6 “That [*name of employer*]’s belief that ... .”

If the plaintiff alleges discrimination on the basis of his or her association with someone who was or was perceived to be disabled, give CACI No. 2547, *Disability-Based Associational Discrimination—Essential Factual Elements*. (See *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 655–660 [163 Cal.Rptr.3d 392] [claim for “disability based associational discrimination” adequately pled].)

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [*insert major life activity*]” in element 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Regarding element 4, it is now settled that the ability to perform the essential duties of the job is an element of the plaintiff’s burden of proof. (See *Green v. State of California* (2007) 42 Cal.4th 254, 257–258 [64 Cal.Rptr.3d 390, 165 P.3d 118].)

Read the first option for element 5 if there is no dispute as to whether the employer’s acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, “*Adverse Employment Action*” Explained, if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 5 and also give CACI No. 2510, “*Constructive Discharge*” Explained. Select “conduct” in element 6 if either the second or third option is included for element 5.

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Element 6 requires that the disability be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, “*Substantial Motivating Reason*” Explained.)

Give the optional sentence in the last paragraph if there is evidence that the defendant harbored personal animus against the plaintiff because of his or her disability.

If the existence of a qualifying disability is disputed, additional instructions defining “physical disability,” “mental disability,” and “medical condition” may be required. (See Gov. Code, § 12926(i), (j), (m).)

### Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Inability to Perform Essential Job Duties. Government Code section 12940(a)(1).
- “Medical Condition” Defined. Government Code section 12926(i).
- “Mental Disability” Defined. Government Code section 12926(j).
- “Physical Disability” Defined. Government Code section 12926(m).
- Perception of Disability and Association With Disabled Person Protected. Government Code section 12926(o).
- “Substantial” Limitation Not Required. Government Code section 12926.1(c).
- “[T]he plaintiff initially has the burden to establish a prima facie case of discrimination. The plaintiff can meet this burden by presenting evidence that demonstrates, even circumstantially or by inference, that he or she (1) suffered from a disability, or was regarded as suffering from a disability; (2) could perform the essential duties of the job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability. To establish a prima facie case, a plaintiff must show ‘ “ “actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a [prohibited] discriminatory criterion ... .” ’ ...’ The prima facie burden is light; the evidence necessary to sustain the burden is minimal. As noted above, while the elements of a plaintiff’s prima facie case can vary considerably, generally an employee need only offer sufficient circumstantial evidence to give rise to a reasonable *inference* of discrimination.” (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 310 [115 Cal.Rptr.3d 453], original italics, internal citations omitted.)
- “The distinction between cases involving *direct evidence* of the employer’s motive for the adverse employment action and cases where there is only *circumstantial evidence* of the employer’s



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discriminatory motive is critical to the outcome of this appeal. There is a vast body of case law that addresses proving discriminatory intent in cases where there was no direct evidence that the adverse employment action taken by the employer was motivated by race, religion, national origin, age or sex. In such cases, proof of discriminatory motive is governed by the three-stage burden-shifting test established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* [(1973) 411 U.S. 792 [93 S. Ct. 1817, 36 L. Ed. 2d 668]. (*Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 123 [199 Cal.Rptr.3d 462], original italics, footnote and internal citations omitted.)

- “The three-stage framework and the many principles adopted to guide its application do not apply in discrimination cases where, like here, the plaintiff presents direct evidence of the employer's motivation for the adverse employment action. In many types of discrimination cases, courts state that direct evidence of intentional discrimination is rare, but disability discrimination cases often involve direct evidence of the role of the employee's actual or perceived *disability* in the employer's decision to implement an adverse employment action. Instead of litigating the employer's reasons for the action, the parties' disputes in disability cases focus on whether the employee was able to perform essential job functions, whether there were reasonable accommodations that would have allowed the employee to perform those functions, and whether a reasonable accommodation would have imposed an undue hardship on the employer. To summarize, courts and practitioners should not automatically apply principles related to the *McDonnell Douglas* test to disability discrimination cases. Rather, they should examine the critical threshold issue and determine whether there is direct evidence that the motive for the employer's conduct was related to the employee's physical or mental condition.” (*Wallace, supra*, 245 Cal.App.4th at p. 123, original italics, footnote and internal citations omitted.)
- “If the employee meets this [prima facie] burden, it is then incumbent on the employer to show that it had a legitimate, nondiscriminatory reason for its employment decision. When this showing is made, the burden shifts back to the employee to produce substantial evidence that employer's given reason was either ‘untrue or pretextual,’ or that the employer acted with discriminatory animus, in order to raise an inference of discrimination.” (*Furtado v. State Personnel Bd.* (2013) 212 Cal.App.4th 729, 744 [151 Cal.Rptr.3d 292], internal citations omitted.)
- “Although the same statutory language that prohibits disability discrimination also prohibits discrimination based on race, age, sex, and other factors, we conclude that disability discrimination claims are fundamentally different from the discrimination claims based on the other factors listed in section 12940, subdivision (a). These differences arise because (1) additional statutory provisions apply to disability discrimination claims, (2) the Legislature made separate findings and declarations about protections given to disabled persons, and (3) discrimination cases involving race, religion, national origin, age and sex, often involve pretexts for the adverse employment action—an issue about motivation that appears less frequently in disability discrimination cases.” (*Wallace, supra*, 245 Cal.App.4th at p. 122.)
- “Summary adjudication of the section 12940(a) claim ... turns on ... whether [plaintiff] could perform the essential functions of the relevant job with or without accommodation. [Plaintiff] does not dispute that she was unable to perform the essential functions of her *former* position as a clothes fitter with or without accommodation. Under federal law, however, when an employee seeks accommodation by being reassigned to a vacant position in the company, the employee satisfies the ‘qualified individual with a disability’ requirement by showing he or she can perform the essential

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functions of the *vacant position* with or without accommodation. The position must exist and be vacant, and the employer need not promote the disabled employee. We apply the same rule here. To prevail on summary adjudication of the section 12940(a) claim, [defendant] must show there is no triable issue of fact about [plaintiff]'s ability, with or without accommodation, to perform the essential functions of an available vacant position that would not be a promotion.” (*Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 965 [83 Cal.Rptr.3d 190], original italics, internal citations omitted.)

- “To establish a prima facie case of mental disability discrimination under FEHA, a plaintiff must show the following elements: (1) She suffers from a mental disability; (2) she is otherwise qualified to do the job with or without reasonable accommodation; and (3) she was subjected to an adverse employment action because of the disability.” (*Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 84 [187 Cal.Rptr.3d 745].)
- “At most, [plaintiff] alleges only that he anticipated becoming disabled for some time after the organ donation. This is insufficient. [Plaintiff] cannot pursue a cause of action for discrimination under FEHA on the basis of his ‘actual’ physical disability in the absence of factual allegations that he was in fact, physically disabled.” (*Rope, supra*, 220 Cal.App.4th at p. 659.)
- “[Defendant] asserts the statute’s ‘regarded as’ protection is limited to persons who are denied or who lose jobs based on an employer’s reliance on the ‘myths, fears or stereotypes’ frequently associated with disabilities. ... However, the statutory language does not expressly restrict FEHA’s protections to the narrow class to whom [defendant] would limit its coverage. To impose such a restriction would exclude from protection a large group of individuals, like [plaintiff], with more mundane long-term medical conditions, the significance of which is exacerbated by an employer’s failure to reasonably accommodate. Both the policy and language of the statute offer protection to a person who is not actually disabled, but is wrongly perceived to be. The statute’s plain language leads to the conclusion that the ‘regarded as’ definition casts a broader net and protects *any* individual ‘regarded’ or ‘treated’ by an employer ‘as having, or having had, any physical condition that makes achievement of a major life activity difficult’ or may do so in the future. We agree most individuals who sue exclusively under this definitional prong likely are and will continue to be victims of an employer’s ‘mistaken’ perception, based on an unfounded fear or stereotypical assumption. Nevertheless, FEHA’s protection is nowhere expressly premised on such a factual showing, and we decline the invitation to import such a requirement.” (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 53 [43 Cal.Rptr.3d 874], original italics, internal citations omitted.)
- “[T]he purpose of the ‘regarded-as’ prong is to protect individuals rejected from a job because of the ‘myths, fears and stereotypes’ associated with disabilities. In other words, to find a perceived disability, the perception must stem from a false idea about the existence of or the limiting effect of a disability.” (*Diffey v. Riverside County Sheriff’s Dept.* (2000) 84 Cal.App.4th 1031, 1037 [101 Cal.Rptr.2d 353], internal citation omitted.)
- “We say on this record that [defendant] took action against [plaintiff] based on concerns or fear about his possible future disability. The relevant FEHA definition of an individual regarded as disabled applies only to those who suffer certain specified physical disabilities or those who have a condition with ‘no present disabling effect’ but which ‘may become a physical disability ... .’ According to the

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pleadings, [defendant] fired [plaintiff] to avoid accommodating him because of his association with his physically disabled sister. That is not a basis for liability under the ‘regarded as’ disabled standard.” (*Rope, supra*, 220 Cal.App.4th at p. 659, internal citations omitted.)

- “ ‘An adverse employment decision cannot be made “because of” a disability, when the disability is not known to the employer. Thus, in order to prove [a discrimination] claim, a plaintiff must prove the employer had knowledge of the employee’s disability when the adverse employment decision was made. ... While knowledge of the disability can be inferred from the circumstances, knowledge will only be imputed to the employer when the fact of disability is the only reasonable interpretation of the known facts. “Vague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice of its obligations ... .” ... ’ ” (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1008 [93 Cal.Rptr.2d 338].)
- “[W]e interpret FEHA as authorizing an employer to distinguish between disability-caused misconduct and the disability itself in the narrow context of threats or violence against coworkers. If employers are not permitted to make this distinction, they are caught on the horns of a dilemma. They may not discriminate against an employee based on a disability but, at the same time, must provide all employees with a safe work environment free from threats and violence.” (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 166 [125 Cal.Rptr.3d 1], internal citations omitted.)
- “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, ... proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time.” (*Harris, supra*, 56 Cal.4th at p. 232, original italics.)
- “We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a “but for” cause.” (*Harris, supra*, 56 Cal.4th at p. 229.)
- “We note that the court in *Harris* discussed the employer's motivation and the link between the employer's consideration of the plaintiff's physical condition and the adverse employment action without using the terms “animus,” “animosity,” or “ill will.” The absence of a discussion of these terms necessarily implies an employer can violate section 12940, subdivision (a) by taking an adverse employment action against an employee “because of” the employee's physical disability even if the employer harbored no animosity or ill will against the employee or the class of persons with that disability.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)
- Based on *Harris*, we conclude that an employer has treated an employee differently ‘because of’ a disability when the disability is a substantial motivating reason for the employer's decision to subject the [employee] to an adverse employment action. This conclusion resolves how the jury should have been instructed on [defendant]'s motivation or intent in connection with the disability discrimination claim.” (*Wallace, supra*, 245 Cal.App.4th at p. 128.)

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- “We conclude that where, as here, an employee is found to be able to safely perform the essential duties of the job, a plaintiff alleging disability discrimination can establish the requisite employer intent to discriminate by proving (1) the employer knew that plaintiff had a physical condition that limited a major life activity, or perceived him to have such a condition, and (2) the plaintiff’s actual or perceived physical condition was a substantial motivating reason for the defendant’s decision to subject the plaintiff to an adverse employment action. ... [T]his conclusion is based on (1) the interpretation of section 12940’s term ‘because of’ adopted in *Harris*; (2) our discussion of the meaning of the statutory phrase ‘to discriminate against’; and (3) the guidance provided by the current versions of CACI Nos. 2540 and 2507. [¶] Therefore, the jury instruction that [plaintiff] was required to prove that [defendant] ‘regarded or treated [him] as having a disability in order to discriminate’ was erroneous.” (*Wallace, supra*, 245 Cal.App.4th at p. 129.)
- “The word ‘animus’ is ambiguous because it can be interpreted narrowly to mean ‘ill will’ or ‘animosity’ or can be interpreted broadly to mean ‘intention.’ In this case, it appears [defendant] uses ‘animus’ to mean something more than the intent described by the substantial-motivating-reason test adopted in *Harris*. (*Wallace, supra*, 245 Cal.App.4th at p. 130, fn. 14, internal citation omitted.)
- “Being unable to work during pregnancy is a disability for the purposes of section 12940.” (*Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1340 [153 Cal.Rptr.3d 367].)

***Secondary Sources***

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 936, 937

Chin et al., California Practice Guide: Employment Litigation, Ch. 9-C, *California Fair Employment And Housing Act (FEHA)*, ¶¶ 9:2160–9:2241 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.78–2.80

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.32[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.14, 115.23, 115.34, 115.77[3][a] (Matthew Bender)

California Civil Practice: Employment Litigation § 2:46 (Thomson Reuters)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

**3061. Discrimination in Business Dealings—Essential Factual Elements (Civ. Code, § 51.5)**


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*[Name of plaintiff]* claims that *[name of defendant]* denied *[him/her]* full and equal rights to conduct business because of *[name of plaintiff]*'s *[sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* *[discriminated against/boycotted/blacklisted/refused to buy from/refused to contract with/refused to sell to/refused to trade with]* *[name of plaintiff]*;
2. *[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] [name of plaintiff]'s [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*];]*

*[or]*

*[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] the [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*] of [name of plaintiff]'s [partners/members/stockholders/directors/officers/managers/superintendents/agents/employees/business associates/suppliers/customers];]*

*[or]*

*[That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] the [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/*[insert other actionable characteristic]*] of a person with whom [name of plaintiff] was associated;]*

3. That *[name of plaintiff]* was harmed; and
  4. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
- 

*New September 2003; Revised June 2012; Renumbered from CACI No. 3021 and Revised December 2012; Revised June 2013, December 2016*

**Directions for Use**

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

Select the bracketed option from element 2 that is most appropriate to the facts of the case.

Under the Unruh Civil Rights Act (see CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*), the California Supreme Court has held that intentional discrimination is required. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159–1162 [278 Cal.Rptr. 614, 805 P.2d 873].) While there is no similar California case imposing an intent requirement under Civil Code section 51.5, Civil Code section 51.5 requires that the discrimination be *on account of* the protected category. (Civ. Code, § 51.5(a).) The kinds of prohibited conduct would all seem to involve intentional acts. (See *Nicole M. v. Martinez Unified Sch. Dist.* (N.D. Cal. 1997) 964 F.Supp. 1369, 1389, superseded by statute on other grounds as stated in *Sandoval v. Merced Union High Sch.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 28446.) The intent requirement is encompassed within the motivating-reason element (element 2).

There is an exception to the intent requirement under the Unruh Act for conduct that violates the Americans With Disabilities Act. (See *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 665 [94 Cal.Rptr.3d 685, 208 P.3d 623].) Because this exception is based on statutory construction of the Unruh Act (see Civ. Code, § 51(f)), the committee does not believe that it applies to section 51.5, which contains no similar language.

Note that there are two causation elements. There must be a causal link between the discriminatory intent and the adverse action (see element 2), and there must be a causal link between the adverse action and the harm (see element 4).

Element 2 uses the term “substantial motivating reason” to express causation between the protected classification and the defendant’s conduct. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason Explained*.”) Whether the FEHA standard applies under Civil Code section 51.5 has not been addressed by the courts.

For an instruction on damages under Civil Code section 51.5, see CACI No. 3067, *Unruh Civil Rights Act—Damages*. Note that the jury may award a successful plaintiff up to three times actual damages but not less than \$4,000. (Civ. Code, § 52(a).); see also Civ. Code, § 52(h) [“actual damages” means special and general damages].)

It is possible that elements 3 and 4 are not needed if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff’s actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

The judge may decide the issue of whether the defendant is a business establishment as a matter of law. (*Rotary Club of Duarte v. Bd. of Directors* (1986) 178 Cal.App.3d 1035, 1050 [224 Cal.Rptr. 213].) Special interrogatories may be needed if there are factual issues. This element has been omitted from the instruction because it is unlikely to go to a jury.

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

Conceptually, this instruction has some overlap with CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*. For a discussion of the basis of this instruction, see *Jackson v. Superior Court* (1994) 30 Cal.App.4th 936, 941 [36 Cal.Rptr.2d 207].

**Sources and Authority**

- Discrimination in Business Dealings. Civil Code section 51.5.
- Protected Characteristics. Civil Code section 51(b).
- “In 1976 the Legislature added Civil Code section 51.5 to the Unruh Civil Rights Act and amended Civil Code section 52 (which provides penalties for those who violate the Unruh Civil Rights Act), in order to, inter alia, include section 51.5 in its provisions.” (*Pines v. Tomson* (1984) 160 Cal.App.3d 370, 384 [206 Cal.Rptr. 866], footnote omitted.)
- “[I]t is clear from the cases under section 51 that the Legislature did not intend in enacting section 51.5 to limit the broad language of section 51 to include only selling, buying or trading. Both sections 51 and 51.5 have been liberally applied to all types of business activities. Furthermore, section 51.5 forbids a business to ‘discriminate against’ ‘any person’ and does not just forbid a business to ‘boycott or blacklist, refuse to buy from, sell to, or trade with any person.’ ” (*Jackson, supra*, 30 Cal.App.4th at p. 941, internal citation and footnote omitted.)
- “Although the phrase ‘business establishment of every kind whatsoever’ has been interpreted by the Supreme Court and the Court of Appeal in the context of section 51, we are aware of no case which interprets that term in the context of section 51.5. We believe, however, that the Legislature meant the identical language in both sections to have the identical meaning.” (*Pines, supra*, 160 Cal.App.3d at p. 384, internal citations omitted.)
- “[T]he classifications specified in section 51.5, which are identical to those of section 51, are likewise not exclusive and encompass other personal characteristics identified in earlier cases.” (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 538 [30 Cal.Rptr.2d 706], internal citations omitted.)
- “[T]he analysis under Civil Code section 51.5 is the same as the analysis we have already set forth for purposes of the [Unruh Civil Rights] Act.” (*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1404 [127 Cal.Rptr.3d 794].)

**Secondary Sources**

8 Witkin, Summary of California Law (10<sup>th</sup> ed. 2005) Constitutional Law, §§ 898–914

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, §§ 116.10–116.13 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, § 35.20 (Matthew Bender)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

**3063. Acts of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)**


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[Name of plaintiff] claims that [name of defendant] committed an act of violence against [him/her] because of [his/her] [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] committed a violent act against [name of plaintiff] [or [his/her] property];
  2. That a substantial motivating reason for [name of defendant]’s conduct was [[his/her] perception of] [name of plaintiff]’s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ [insert other actionable characteristic]];
  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.
- 

Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023A December 2012; Revised June 2013, December 2016

#### Directions for Use

Use this instruction for a cause of action under the Ralph Act involving actual acts of violence alleged to have been committed by the defendant against the plaintiff. For an instruction involving only threats of violence, see CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s acts. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason Explained*.”) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

Liability may also be found if a defendant “aids, incites, or conspires” in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

#### Sources and Authority



**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Remedies Under Ralph Act. Civil Code section 52(b).
- “The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened.” (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- “Nor do we agree with defendants that ‘because of’ logically means ‘hatred.’ Section 51.7 provides that all persons ‘have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of ...’ specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate.” (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- “Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state.” (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

***Secondary Sources***

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

**3064. Threats of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)**


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*[Name of plaintiff]* claims that *[name of defendant]* intimidated *[him/her]* by threat of violence because of *[his/her]* *[race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ *[insert other actionable characteristic]*]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* intentionally threatened violence against *[name of plaintiff]* *[or [his/her] property]*, *[whether or not [name of defendant] actually intended to carry out the threat]*;
  2. That a substantial motivating reason for *[name of defendant]*'s conduct was *[[his/her] perception of] [name of plaintiff]'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/ *[insert other actionable characteristic]*]*;
  3. That a reasonable person in *[name of plaintiff]*'s position would have believed that *[name of defendant]* would carry out *[his/her]* threat;
  4. That a reasonable person in *[name of plaintiff]*'s position would have been intimidated by *[name of defendant]*'s conduct;
  5. That *[name of plaintiff]* was harmed; and
  6. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
- 

*Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023B December 2012; Revised June 2013, December 2016*

#### Directions for Use

Use this instruction for a cause of action under the Ralph Act involving threats of violence alleged to have been directed by the defendant toward the plaintiff. For an instruction involving actual acts of violence, see CACI No. 3063, *Acts of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s threats. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, “*Substantial Motivating Reason*” Explained.) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

No published California appellate opinion establishes elements 3 and 4. However, the Ninth Circuit Court of Appeals and the California Fair Employment and Housing Commission have held that a reasonable person in the plaintiff's position must have been intimidated by the actions of the defendant and have perceived a threat of violence. (See *Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1289–1290; *Dept. Fair Empl. & Hous. v. Lake Co. Dept. of Health Serv.* (July 22, 1998) 1998 CAFEHC LEXIS 16, 55–56.)

Liability may also be found if a defendant “aids, incites, or conspires” in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

### Sources and Authority

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Remedies Under Ralph Act. Civil Code section 52(b).
- “The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened.” (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- “Nor do we agree with defendants that ‘because of’ logically means ‘hatred.’ Section 51.7 provides that all persons ‘have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of ...’ specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate.” (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- “The test is: ‘would a reasonable person, standing in the shoes of the plaintiff, have been intimidated by the actions of the defendant and have perceived a threat of violence?’ ” (*Winarto, supra*, 274 F.3d at pp. 1289–1290, internal citation omitted.)
- “When a threat of violence would lead a reasonable person to believe that the threat will be carried out, in light of the ‘entire factual context,’ including the surrounding circumstances and the listeners’ reactions, then the threat does not receive First Amendment protection, and may be actionable under the Ralph Act. The only intent requirement is that respondent ‘intentionally or knowingly communicates his [or her] threat, not that he intended or was able to carry out his threat.’ A threat exists if the ‘target of the speaker reasonably believes that the speaker has the ability to act him or herself or to influence others. . . . It is the perception of a reasonable person that is dispositive, not the actual intent of the speaker.’ ” (*Dept. Fair Empl. & Hous., supra*, 1998 CAFEHC LEXIS at pp. 55–56, internal citations omitted.)

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

- “Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state.” (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

***Secondary Sources***

~~[Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, Employment Discrimination—Unruh Civil Rights Act ¶¶ 7:1528–7:1529 \(The Rutter Group\)](#)~~

~~[Chin et al., California Practice Guide: Employment Litigation \(The Rutter Group\) ¶ 5:892.11, ¶¶ 7:1528–7:1529](#)~~

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

**VF-3030. Unruh Civil Rights Act (Civ. Code, §§ 51, 52(a))**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [deny/aid or incite a denial of/discriminate or make a distinction that denied] full and equal [accommodations/advantages/facilities/privileges/services] to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

2. Was [[name of defendant]'s perception of] [name of plaintiff]'s [sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[insert other actionable characteristic]] a substantial motivating reason for [name of defendant]'s conduct?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

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

[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

Answer question 5.

5. What amount, if any, do you award as a penalty against [name of defendant]?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

[After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, June 2012; Renumbered from CACI No. VF-3010 December 2012; Revised June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*.

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

If the plaintiff's association with another is the basis for the claim, modify question 2 as in element 2 of CACI No. 3060.

Questions 3 and 4 may be omitted if only the statutory minimum of \$4,000 damages is sought. Harm is presumed for this amount. (See Civ. Code, § 52(a); *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33)

[219 Cal.Rptr. 133, 707 P.2d 195].)

The penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that limit. Also, if the jury awards nothing or an amount less than \$4,000 in question 5, the judge should increase that award to \$4,000 to reflect the statutory minimum.

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

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

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

**VF-3031. Discrimination in Business Dealings (Civ. Code, §§ 51.5, 52(a))**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [discriminate against/boycott/blacklist/refuse to buy from/refuse to contract with/refuse to sell to/refuse to trade with] [*name of plaintiff*]?  
 Yes  No

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

2. Was [[*name of defendant*]'s perception of] [*name of plaintiff*]'s [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[*insert other actionable characteristic*]] a substantial motivating reason for [*name of defendant*]'s conduct?  
 Yes  No

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

3. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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



**Total Future Economic Damages: \$ \_\_\_\_\_]**

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

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

**TOTAL \$ \_\_\_\_\_**

**Answer question 5.**

**5. What amount, if any, do you award as a penalty against [name of defendant]?**  
**\$ \_\_\_\_\_**

**Signed: \_\_\_\_\_**  
**Presiding Juror**

**Dated: \_\_\_\_\_**

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, June 2012, Renumbered from CACI No. VF-3011 December 2012; Revised June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3061, *Discrimination in Business Dealings—Essential Factual Elements*.

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

If an alternative basis for the defendant’s alleged motivation is at issue, modify question 2 as in element 2 of CACI No. 3061.

The award of a penalty in question 5 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if the jury awards nothing or an amount less than

\$4,000 in question 5, then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 3 and 4 may be omitted if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

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

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

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

VF-3033. Ralph Act (Civ. Code, § 51.7)

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [threaten/commit] violent acts against [*name of plaintiff*] [or [his/her] property]?  
 Yes  No

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

2. Was [[*name of defendant*]'s perception of] [*name of plaintiff*]'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/ citizenship/primary language/immigration status/position in a labor dispute/[insert other actionable characteristic]] a substantial motivating reason for [*name of defendant*]'s conduct?  
 Yes  No

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

- [3. Would a reasonable person in [*name of plaintiff*]'s position have believed that [*name of defendant*] would carry out [his/her] threats?  
 Yes  No

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

- [4. Would a reasonable person in [*name of plaintiff*]'s position have been intimidated by [*name of defendant*]'s conduct?  
 Yes  No

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

5. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[7. What amount do you award as punitive damages?

\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2009, December 2010; Renumbered from CACI No. VF-3013 December 2012; Revised June 2013, December 2016

### Directions for Use

This verdict form is based on CACI No. 3063, *Acts of Violence—Ralph Act—Essential Factual Elements*, and CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

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

Include questions 3 and 4 in a case of threats of violence.

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

Punitive damages (question 7) are authorized by Civil Code section 52(b)(2). For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.)

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

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

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

## 3103. Neglect—Essential Factual Elements (Welf. &amp; Inst. Code, § 15610.57)

*[Name of plaintiff]* claims that *[he/she/[name of decedent]]* was neglected by *[[name of individual defendant]/ [and] [name of employer defendant]]* in violation of the Elder Abuse and Dependent Adult Civil Protection Act. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[[name of individual defendant]/[name of employer defendant]'s employee]* had **a substantial caretaking or custodial relationship with care or custody of** *[name of plaintiff/decedent]*, **involving ongoing responsibility for [his/her] basic needs, which an able-bodied and fully competent adult would ordinarily be capable of managing without assistance;**
2. That *[name of plaintiff/decedent]* was **[65 years of age or older/a dependent adult]** while *[he/she]* was in *[[name of individual defendant]'s/[name of employer defendant]'s employee's]* care or custody;
3. That *[[name of individual defendant]/[name of employer defendant]'s employee]* failed to use the degree of care that a reasonable person in the same situation would have used in **providing for [name of plaintiff/decedent]'s basic needs, including** *[insert one or more of the following:]*

**[assisting in personal hygiene or in the provision of food, clothing, or shelter;]**

**[providing medical care for physical and mental health needs;]**

**[protecting *[name of plaintiff/decedent]* from health and safety hazards;]**

**[preventing malnutrition or dehydration;]**

*[insert other grounds for neglect;]*
4. That *[name of plaintiff/decedent]* was harmed; and
5. That *[[name of individual defendant]'s/[name of employer defendant]'s employee's]* conduct was a substantial factor in causing *[name of plaintiff/decedent]'s* harm.

*New September 2003; Revised December 2005, June 2006, October 2008, December 2016*

#### Directions for Use

This instruction may be given in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act (**the Act**) by the victim of elder neglect, or by the survivors of the victim. If the victim is the plaintiff and is seeking damages for pain and suffering, see CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*, in the Damages series.

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If the plaintiff seeks the enhanced remedies of attorney fees and costs, and in the case of a wrongful death, the decedent’s pain and suffering, give CACI No. 3104, *Neglect—Enhanced Remedies Sought*, in addition to this instruction. (See Welf. & Inst. Code, § 15657.)

If the individual responsible for the neglect is a defendant in the case, use “[*name of individual defendant*]” throughout. If only the individual’s employer is a defendant, use “[*name of employer defendant*]’s employee” throughout.

If the plaintiff is seeking enhanced remedies against the individual’s employer, also give either CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*, or CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*. To recover damages against the employer under a theory of vicarious liability, see instructions in the Vicarious Responsibility series (CACI No. 3700 et seq.).

~~The Act does not extend to this instruction is not intended for~~ cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship with the elder or dependent adult patient, involving ongoing responsibility for one or more basic needs, (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152. [202 Cal.Rptr.3d 447, 370 P.3d 1011]; see Welf. & Inst. Code, § 15657.2; Civ. Code, § 3333.2(c)(2)).

The instructions in this series are not intended to cover every circumstance in which a plaintiff may bring a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act.

### Sources and Authority

- “Elder Abuse” Defined. Welfare and Institutions Code section 15610.07.
- “Dependent Adult” Defined. Welfare and Institutions Code section 15610.23.
- “Elder” Defined. Welfare and Institutions Code section 15610.27.
- “Neglect” Defined. Welfare and Institutions Code section 15610.57.
- Claims for Professional Negligence Excluded. Welfare and Institutions Code section 15657.2.
- “It is true that statutory elder abuse includes ‘neglect as defined in Section 15610.57,’ which in turn includes negligent failure of an elder custodian ‘to provide medical care for [the elder’s] physical and mental health needs.’ ... ‘[N]eglect’ within the meaning of Welfare and Institutions Code section 15610.57 covers an area of misconduct distinct from ‘professional negligence.’ As used in the Act, neglect refers not to the substandard performance of medical services but, rather, to the ‘failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.’ Thus, the statutory definition of ‘neglect’ speaks not of the *undertaking* of medical services, but of the failure to *provide* medical care.” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783 [11 Cal.Rptr.3d 222, 86 P.3d 290], original italics, internal citations omitted.)

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- “We granted review to consider whether a claim of neglect under the Elder Abuse Act requires a caretaking or custodial relationship—where a person has assumed significant responsibility for attending to one or more of those basic needs of the elder or dependent adult that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance. Taking account of the statutory text, structure, and legislative history of the Elder Abuse Act, we conclude that it does.” (*Winn, supra*, 63 Cal.4th at p. 155.)
- “[T]he Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient. It is the nature of the elder or dependent adult's relationship with the defendant—not the defendant's professional standing—that makes the defendant potentially liable for neglect.” (*Winn, supra*, 63 Cal.4th at p. 152.)
- “The Act seems premised on the idea that certain situations place elders and dependent adults at heightened risk of harm, and heightened remedies relative to conventional tort remedies are appropriate as a consequence. Blurring the distinction between neglect under the Act and conduct actionable under ordinary tort remedies—even in the absence of a care or custody relationship—risks undermining the Act's central premise. Accordingly, plaintiffs alleging professional negligence may seek certain tort remedies, though not the heightened remedies available under the Elder Abuse Act.” (*Winn, supra*, 63 Cal.4th at p. 159, internal citation omitted.)
- “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33 [82 Cal.Rptr.2d 610, 971 P.2d 986].)
- “[T]he statutory definition of neglect set forth in the first sentence of Welfare and Institutions Code section 15610.57 is substantially the same as the ordinary definition of neglect.” (*Conservatorship of Gregory v. Beverly Enterprises, Inc.* (2000) 80 Cal.App.4th 514, 521 [95 Cal.Rptr.2d 336].)
- ~~“The Act was expressly designed to protect elders and other dependent adults who ‘may be subjected to abuse, neglect, or abandonment ...’ Within the Act, two groups of persons who ordinarily assume responsibility for the ‘care and custody’ of the elderly are identified and defined: health practitioners and care custodians. A ‘health practitioner’ is defined in section 15610.37 as a ‘physician and surgeon, psychiatrist, psychologist, dentist, ...’ etc., who ‘treats an elder ... for any condition.’ ‘Care custodians,’ on the other hand, are administrators and employees of public and private institutions that provide ‘care or services for elders or dependent adults,’ including nursing homes, clinics, home health agencies, and similar facilities which house the elderly. The Legislature thus recognized that both classes of professionals—health practitioners as well as care custodians—should be charged with responsibility for the health, safety and welfare of elderly and dependent adults.”~~ (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 974 [95 Cal.Rptr.2d 830], internal citations omitted.)
- “[N]eglect as a form of abuse under the Elder Abuse Act refers ‘to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.’ ” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404 [129 Cal.Rptr.3d 895].)



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- “[A] violation of staffing regulations here may provide a basis for finding neglect. Such a violation might constitute a negligent failure to exercise the care that a similarly situated reasonable person would exercise, or it might constitute a failure to protect from health and safety hazards . . . . The former is the definition of neglect under the Act, and the latter is just one nonexclusive example of neglect under the Act.” (Fenimore v. Regents of University of California (2016) 245 Cal.App.4th 1339, 1348–1349 [200 Cal.Rptr.3d 245].)

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1686–1688

California Elder Law Litigation (Cont.Ed.Bar 2003) §§ 2.70–2.71

3 Levy et al., California Torts, Ch. 31 *Liability of Physicians and Other Medical Practitioners*, § 31.50[4][d] (Matthew Bender)

1 California Forms of Pleading and Practice, Ch. 5, *Abuse of Minors and Elderly*, § 5.33[3] (Matthew Bender)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3511. Permanent Severance Damages

The [name of condemnor] has taken only a part of [name of property owner]’s property. [Name of property owner] claims that [his/her/its] remaining property has lost value as a result of the taking **because [specify reasons alleged for diminution of value of remaining property].** This loss in value is called “severance damages.” ~~and must be included in determining just compensation.~~

Severance damages are the damages to [name of property owner]’s remaining property caused by the taking, ~~or by the construction and use of the [name of condemnor]’s proposed project, or by both.~~ **If you determine that the remaining property has lost value because of the taking, severance damages must be included in determining just compensation.**

Severance damages are determined as follows:

1. Determine the fair market value of the remaining property on [date of valuation] by subtracting the fair market value of the part taken from the fair market value of the entire property;
2. Determine the fair market value of the remaining property after the [name of condemnor]’s proposed project is completed; and
3. Subtract the fair market value of the remaining property after the [name of condemnor]’s proposed project is completed from the fair market value of the remaining property on [date of valuation].

*New September 2003; Revised December 2016*

### Directions for Use

Give this instruction if the owner claims that property not taken has permanently lost value because of the taking, for example because a view has been lost. It is for the jury to determine if such a loss has actually occurred as long as the claim is not speculative, conjectural, or remote. (Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc. (2007) 41 Cal.4th 954, 973 [62 Cal.Rptr.3d 623, 161 P.3d 1175.]) Read CACI No. 3512, *Severance Damages—Offset for Benefits*, if benefits to the owner’s remaining property are at issue.

A property owner may also be able to recover for economic loss to the remaining property incurred during the construction of the project. (City of Fremont v. Fisher (2008) 160 Cal.App.4th 666, 676 [73 Cal.Rptr.3d 54.]) This recovery has been called “temporary severance damages.” This instruction is not for use to compute loss during construction.

### Sources and Authority

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

- Right to Severance Damages. Code of Civil Procedure section 1263.410.
- Damages to Remainder After Severance. Code of Civil Procedure section 1263.420.
- Benefit to Remainder. Code of Civil Procedure section 1263.430.
- “When property acquired by eminent domain is part of a larger parcel, compensation must be awarded for the injury, if any, to the remainder. Such compensation is commonly called severance damages. When the property taken is but part of a single legal parcel, the property owner need only demonstrate injury to the portion that remains to recover severance damages.” (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 741 [25 Cal.Rptr.2d 480, 863 P.2d 725], internal citations omitted.)
- “The claimed loss in market value must directly and proximately flow from the taking. Thus, recovery may not be based on ‘ “ ‘speculative, remote, imaginary, contingent, or merely possible’ ” ’ events.” (*City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1466 [141 Cal.Rptr.3d 271].)
- The court determines as a matter of law what constitutes the “larger parcel” for which severance damages may be obtained: “The Legislature has framed the question of whether property should be viewed as an integrated whole in terms of whether the land remaining after the taking forms part of a ‘larger parcel’.” (*City of San Diego, supra*, 6 Cal.4th at p. 745, internal citations omitted.)
- “As we said in *Pierpont Inn*, ‘Where the property taken constitutes only a part of a larger parcel, the owner is entitled to recover, inter alia, the difference in the fair market value of his property in its “before” condition and the fair market value of the remaining portion thereof after the construction of the improvement on the portion taken. Items such as view, access to beach property, freedom from noise, etc. are unquestionably matters which a willing buyer in the open market would consider in determining the price he would pay for any given piece of real property.’ Severance damages are not limited to special and direct damages, but can be based on any factor, resulting from the project, that causes a decline in the fair market value of the property.” (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 712 [66 Cal.Rptr.2d 630, 941 P.2d 809], internal citations omitted.)
- “Both sides here thus agree that the court, not the jury, must make certain determinations that are a predicate to the award of severance damages. But [condemnor] is on weaker ground when it attempts to derive ... a general rule that ‘as a matter of constitutional and decisional law, *all* issues having to do with the existence of, or entitlement to, severance damages are entrusted to the trial judge,’ such that ‘[o]nly after the trial judge has determined that severance damages exist does the jury consider the amount of those severance damages.’ [Condemnor]’s proposed rule assumes that questions relating to the measurement of severance damages can be readily distinguished from questions relating to the entitlement to them in the first place but, as we have previously cautioned, the two concepts are not necessarily ‘so easily separable.’ ” (*Metropolitan Water Dist. of So. California, supra, v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th at p.954, 972 [~~62 Cal.Rptr.3d 623, 161 P.3d 1175~~], original italics, internal citations omitted.)
- “[W]here the property owner produces evidence tending to show that some other aspect of the taking ... ‘naturally tends to and actually does decrease the market value’ of the remaining property, it is for

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the jury to weigh its effect on the value of the property, as long as the effect is not speculative, conjectural, or remote.” (*Metropolitan Water Dist. of So. California, supra*, 41 Cal.4th at p. 973.)

- “In determining severance damage, the jury must assume ‘the most serious damage’ which will be caused to the remainder by the taking of the easement and construction of the property. The value of the remainder after the condemnation has occurred is referred to as the ‘after’ value of the property. The diminution in fair market value is determined by comparing the before and after values. This is the amount of the severance damage.” (*San Diego Gas & Electric Co. v. Daley* (1988) 205 Cal.App.3d 1334, 1345 [253 Cal.Rptr. 144], internal citations omitted, disapproved on other grounds in *Los Angeles County Metropolitan Transportation Authority, supra*, 16 Cal.4th at p. 720.)
- “[S]everance damages are not limited to specific direct damages but can be based on any indirect factors that cause a decline in the market value of the property. California decisions have indicated the following are compensable as direct damages under section 1263.410: (1) impairment of view, (2) restriction of access, (3) increased noise, (4) invasion of privacy, (5) unsightliness of the project, (6) lack of maintenance of the easement and (7) nuisances in general such as trespassers and safety risks. Several courts have recognized that the condemnee should be compensated for any characteristic of the project which causes ‘an adverse impact on the fair market value of the remainder.’” (*San Diego Gas & Electric Co., supra*, 205 Cal.App.3d at p. 1345.)
- “When ‘the property acquired [by eminent domain] is part of a larger parcel,’ in addition to compensation for the property actually taken, the property owner must be compensated for the injury, if any, to the land that he retains. Once it is determined that the owner is entitled to severance damages, they, too, normally are measured by comparing the fair market value of the remainder before and after the taking.” (*City of San Diego, supra*, 6 Cal.4th at p. 745, internal citations and footnote omitted.)
- “[W]hether access to a property has been ‘substantially impaired’ for purposes of determining severance damages is a question for the court, even though ‘[s]ubstantial impairment cannot be fixed by abstract definition; it must be found in each case upon the basis of the factual situation.’” (*City of Perris v. Stamper* (2016) 1 Cal.5th 576, 594 [-- Cal.Rptr.3d --, -- P.3d --].)
- “Temporary severance damages resulting from the construction of a public project are also compensable. A property owner ‘generally should be able “to present evidence to show whether and to what extent the delay disrupted its use of the remaining property.”’ However, ‘the mere fact of a delay associated with construction’ does not, without more, entitle the property owner to temporary severance damages. The temporary easement or taking must interfere with the owner's *actual intended use of the property.*” (*City of Fremont, supra*, 160 Cal.App.4th at p. 676, original italics.)

### *Secondary Sources*

8 Witkin, Summary of California Law (10th ed. 2005) Constitutional Law, §§ 1236–1244

1 Condemnation Practice in California (Cont.Ed.Bar 3d ed.) Ch. 5

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14 California Real Estate Law and Practice, Ch. 508, *Evidence: General*, §§ 508.24, 508.25 (Matthew Bender)

4A Nichols on Eminent Domain, Ch. 14, *Damages for Partial Takings*, §§ 14.01–14.03 (Matthew Bender)

5 Nichols on Eminent Domain, Ch. 16, *Consequential Damages as a Result of Proposed Use*, §§ 16.01–16.05 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 247, *Eminent Domain and Inverse Condemnation*, § 247.140 (Matthew Bender)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

3706. Special Employment—~~Lending General Employer and/or Special Employer~~ Denies  
Responsibility for Worker's Acts

**When one employer sends or loans an employee to work for another employer, a special employment relationship may be created that affects the duties and responsibilities between the two employers and the employee. The arrangement may be temporary, with a determined ending date or event; or it may be open-ended. In this situation, the borrowing employer is known as a “special employer” and the employee is referred to as a “special employee.”**

[Name of plaintiff] claims that [name of worker] was the employee of [name of defendant ~~first lending~~ employer] when the incident occurred, and that [name of defendant ~~first lending~~ employer] is therefore responsible for [name of worker]'s conduct. [Name of defendant ~~first lending~~ employer] claims that [name of worker] was the **temporary special** employee of [name of defendant ~~second borrowing~~ employer] when the incident occurred, and therefore [name of defendant ~~second borrowing~~ employer] is solely responsible for [name of worker]'s conduct.

In deciding whether [name of worker] was [name of defendant ~~second borrowing~~ employer]'s **temporary special** employee when the incident occurred, the most important factor is whether [name of defendant ~~second borrowing~~ employer] had the right to fully control the **details of the work** activities of [name of worker], rather than just the right to specify the result. It does not matter whether [name of defendant ~~second borrowing~~ employer] **actually** exercised the right to control.

In addition to the right **of to** control, you must consider all the circumstances in deciding whether [name of worker] was [name of defendant ~~second borrowing~~ employer]'s **temporary special** employee when the incident occurred. The following factors, if true, may tend to show that [name of worker] was the **temporary special** employee of [name of defendant ~~second borrowing~~ employer]. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.

- (a) [Name of defendant ~~second borrowing~~ employer] supplied the equipment, tools, and place of work;
- (b) [Name of worker] was paid by the hour rather than by the job;
- (c) The work being done by [name of worker] was part of the regular business of [name of defendant ~~second borrowing~~ employer];
- (d) [Name of defendant ~~second borrowing~~ employer] had the right to terminate [name of worker]'s employment, not just the right to have [him/her] removed from the job site;
- (e) [Name of worker] was not engaged in a distinct occupation or business;
- (f) The kind of work performed by [name of worker] is usually done under the direction of a supervisor rather than by a specialist working without supervision;

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- (g) The kind of work performed by [name of worker] does not require specialized or professional skill;
- (h) The services performed by [name of worker] were to be performed over a long period of time;
- (i) [Name of defendant ~~first lending~~ employer] and [name of defendant ~~second borrowing~~ employer] were not jointly engaged in a project of mutual interest;
- (j) [Name of worker], expressly or by implication, consented to the **temporary special** employment with [name of defendant ~~second borrowing~~ employer]; [and]
- (k) [Name of worker] and [name of defendant ~~second borrowing~~ employer] believed that they had a **temporary special** employment relationship[./;] [and]
- (l) [Specify any other relevant factors.]
- 

New September 2003; Revised June 2013, December 2015, December 2016

#### Directions for Use

This instruction is for use in “special employment” cases. Special employment arises when a worker has been loaned from one employer to another, and there is an issue as to which employer the worker should be attributed with regard to the claim in the case. The borrowing employer is called the “special” employer. The lending employer is sometimes called the “general” employer, though use of that term may be confusing to a jury.

The instruction as drafted is for use by the lending employer to claim that the worker should be considered as the special employee of the borrowing employer. This would be the case if the issue is which employer is responsible for the worker’s tortious conduct under respondeat superior. The instruction may be modified if the claim is for injury to the worker, and the borrowing employer wants to claim the worker as its own in order to take advantage of the exclusive remedy bar of workers’ compensation. This instruction is not for use by the worker to claim employment rights under the Labor Code, though many of its provisions will likely be applicable.

~~if the worker’s regular (general) employer claims that at the time of injury, the worker was actually working for a different (special) employer. It may be adapted for use if the plaintiff’s claim is against the special employer. The terms “first and second employer” have been substituted for “special and general employer” to make the concept more straightforward. Also, the term “temporary employee” has been substituted for the term “special employee” for the same reason.~~

In addition to the ~~alleged special borrowing~~ employer’s control over the employee, there are a number of relevant secondary factors to use in deciding whether a special employment relationship existed. They are similar, but not identical, to the factors from the Restatement Second of Agency, section 220 to be used in an independent contractor analysis. (See *State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1013–1014 [184 Cal.Rptr.3d 354, 343 P.3d 415]; CACI No. 3704,

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*Existence of “Employee” Status Disputed*; see also *Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 492 [162 Cal.Rptr. 320, 606 P.2d 355]; *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 176–177 [151 Cal.Rptr. 671, 588 P.2d 811].) In the employee-contractor context, it has been held to be error not to give the secondary factors. (See *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 303–304 [111 Cal.Rptr.3d 787].)

**Sources and Authority**

- “[W]here the servants of two employers are jointly engaged in a project of mutual interest, each employee ordinarily remains the servant of his own master and does not thereby become the special employee of the other.” (*Marsh, supra*, 26 Cal.3d at p. 493.)
- “When an employer -- the ‘general’ employer -- lends an employee to another employer and relinquishes to a borrowing employer all right of control over the employee's activities, a ‘special employment’ relationship arises between the borrowing employer and the employee. During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee's job-related torts.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- “The law of agency has long recognized that a person generally the servant of one master can become the borrowed servant of another. If the borrowed servant commits a tort while carrying out the bidding of the borrower, vicarious liability attaches to the borrower and not to the general master.” (*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 455-456 [183 Cal.Rptr. 51, 645 P.2d 102], internal citations omitted.)
- “Liability in borrowed servant cases involves the exact public policy considerations found in sole employer cases. Liability should be on the persons or firms which can best insure against the risk, which can best guard against the risk, which can most accurately predict the cost of the risk and allocate the cost directly to the consumers, thus reflecting in its prices the enterprise’s true cost of doing business.” (*Strait v. Hale Construction Co.* (1972) 26 Cal.App.3d 941, 949 [103 Cal.Rptr. 487].)
- “In determining whether a special employment relationship exists, the primary consideration is whether the special employer has “ ‘[t]he right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. ...’ ” However, ‘[whether] the right to control existed or was exercised is generally a question of fact to be resolved from the reasonable inferences to be drawn from the circumstances shown.’ ” (*Kowalski, supra*, 23 Cal.3d at p. 175, internal citations omitted.)
- “[S]pecial employment is most often resolved on the basis of ‘reasonable inferences to be drawn from the circumstances shown.’ Where the evidence, though not in conflict, permits conflicting inferences, ... ‘ “the existence or nonexistence of the special employment relationship barring the injured employee’s action at law is generally a question reserved for the trier of fact.” ’ ” (*Marsh, supra*, 26 Cal.3d at p. 493.)
- “[I]f neither the evidence nor inferences are in conflict, then the question of whether an employment relationship exists becomes a question of law which may be resolved by summary judgment.” (*Riley*



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*v. Southwest Marine, Inc.* (1988) 203 Cal.App.3d 1242, 1248-1249 [250 Cal.Rptr. 718], internal citations omitted.)

- “The special employment relationship and its consequent imposition of liability upon the special employer flows from the borrower’s power to supervise the details of the employee’s work. Mere instruction by the borrower on the result to be achieved will not suffice.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- ~~“The contract cannot affect the true relationship of the parties to it. Nor can it place an employee in a different position from that which he actually held.” (*Kowalski, supra*, 23 Cal.3d at p. 176.)~~
- “California courts have held that evidence of the following circumstances tends to negate the existence of a special employment: The employee is (1) not paid by and cannot be discharged by the borrower, (2) a skilled worker with substantial control over operational details, (3) not engaged in the borrower's usual business, (4) employed for only a brief period of time, and (5) using tools and equipment furnished by the lending employer.” (*Marsh, supra*, 26 Cal.3d at p. 492.)
- “The common law also recognizes factors secondary to the right of control. We have looked to other considerations discussed in the Restatement of Agency to assess whether an employer-employee relationship exists. The comments to section 227 of the Restatement Second of Agency, which covers servants lent by one master to another, note that ‘[m]any of the factors stated in Section 220 which determine that a person is a servant are also useful in determining whether the lent servant has become the servant of the borrowing employer.’ The secondary Restatement factors that we have adopted are: ‘“(a) [W]hether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.” [Citations.]’ ” (*State ex rel. Dept. of California Highway Patrol, supra*, 60 Cal.4th at pp. 1013–1014, internal citations omitted.)
- “Evidence that the alleged special employer has the power to discharge a worker ‘is strong evidence of the existence of a special employment relationship. . . . The payment of wages is not, however, determinative.’ Other factors to be taken into consideration are ‘the nature of the services, whether skilled or unskilled, whether the work is part of the employer's regular business, the duration of the employment period, . . . and who supplies the work tools.’ Evidence that (1) the employee provides unskilled labor, (2) the work he performs is part of the employer's regular business, (3) the employment period is lengthy, and (4) the employer provides the tools and equipment used, tends to indicate the existence of special employment. Conversely, evidence to the contrary negates existence of a special employment relationship. [¶¶] In addition, consideration must be given to whether the worker consented to the employment relationship, either expressly or impliedly, and to whether the parties believed they were creating the employer-employee relationship.” (*Kowalski, supra*, 23 Cal.3d at pp. 176-178, footnotes and internal citations omitted.)

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- “Moreover, that an alleged special employer can have an employee removed from the job site does not necessarily indicate the existence of a special employment relationship. Anyone who has the employees of an independent contractor working on his premises could, if dissatisfied with an employee, have the employee removed. Yet, the ability to do so would not make the employees of the independent contractor the special employees of the party receiving the services.” (*Kowalski, supra*, 23 Cal.3d at p. 177 fn. 9.)
- [T]he jury need not find that [the worker] remained exclusively defendant's employee in order to impose liability on defendant. Facts demonstrating the existence of a special employment relationship do not necessarily preclude a finding that a particular employee also remained under the partial control of the original employer. Where general and special employers share control of an employee's work, a ‘dual employment’ arises, and the general employer remains concurrently and simultaneously, jointly and severally liable for the employee's torts.” (*Marsh, supra*, 26 Cal.3d at pp. 494–495.)

***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 169–172

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

51 California Forms of Pleading and Practice, Ch. 577, *Workers’ Compensation*, § 577.22 (Matthew Bender)

23 California Points and Authorities, Ch. 239, *Workers’ Compensation Exclusive Remedy Doctrine*, § 239.28 (Matthew Bender)

1 California Civil Practice: Torts §§ 3:26–3:27 (Thomson Reuters)

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## 3707. Special Employment—Joint Responsibility

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**If you decide that [name of worker] was the ~~temporary-special~~ employee of [name of defendant ~~second borrowing~~ employer], but that [name of defendant ~~first-lending~~ employer] partially controlled [name of worker]’s activities along with [name of defendant ~~second-borrowing~~ employer], then you must conclude that both [name of defendant ~~first-lending~~ employer] and [name of defendant ~~second borrowing~~ employer] are responsible for the conduct of [name of worker].**

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New September 2003; Revised December 2016

### Directions for Use

Give this instruction with CACI No. 3706, *Special Employment—Lending Employer Denies Responsibility for Worker’s Acts*, if the jury will be given the option of deciding that both the lending employer and the borrowing employer should be treated as the worker’s employer with regard to the claim at issue.

### Sources and Authority

- “ “Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—his original or ‘general’ employer and a second, the ‘special’ employer.” A general employer is absolved of respondeat superior liability when it has relinquished total control to the special employer. During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee’s job-related torts.” (*Montague v. AMN Healthcare, Inc.* (2014) 223 Cal.App.4th 1515, 1520 [168 Cal.Rptr.3d 123], internal citations omitted.)
- “Facts demonstrating the existence of a special employment relationship do not necessarily preclude a finding that a particular employee also remained under the partial control of the original employer. Where general and special employers share control of an employee’s work, a ‘dual employment’ arises, and the general employer remains concurrently and simultaneously, jointly and severally liable for the employee’s torts.” (*Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 494-495 [162 Cal.Rptr. 320, 606 P.2d 355], internal citations omitted.)
- “This is especially true where the loaned employee performs work of interest to both the general and special employers.” (*Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 460 [183 Cal.Rptr. 51, 645 P.2d 102], internal citation omitted.) If the loaned employee performs work of interest to both the general and special employers, “there is a presumption that the [employee] remained in his general employment. (*Ibid.*) The [general employer] can avoid liability only if it can [prove] that it gave up ... ‘authoritative direction and control’ [over the employee].” (*Ibid.*)
- “ ‘Authoritative direction and control’ is more than the power to suggest details or the necessary

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cooperation.” (*Societa per Azioni de Navigazione Italia, supra*, 31 Cal.3d at p. 460, internal citations omitted.)

***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 169–172

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

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

1 California Civil Practice: Torts §§ 3:26–3:27 (Thomson Reuters)

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL****3935. Prejudgment Interest (Civ. Code, § 3288)**


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**If you decide that [name of plaintiff] is entitled to recover damages for past economic loss in one or more of the categories of damages that [she/he/it] claims, then you must decide whether [he/she/it] should also receive prejudgment interest on each item of loss in those categories. Prejudgment interest is the amount of interest the law provides to a plaintiff to compensate for the loss of the ability to use the funds. If prejudgment interest is awarded, it is computed from the date on which each loss was incurred until the date on which you sign your verdict.**

**Whether [name of plaintiff] should receive an award of prejudgment interest on all, some, or none of any past economic damages that you may award is within your discretion. If you award these damages to [name of plaintiff], you will be asked to address prejudgment interest in the special verdict form.**

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*New December 2016*

**Directions for Use**

Give this instruction if the court determines that the jury may award prejudgment interest. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. (Civ. Code, § 3288.) The statute allows the jury to award prejudgment interest on any claim within its scope. (*Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22; 582 P.2d 109].) The special verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

The role of the jury in awarding prejudgment interest is not clear from Civil Code section 3288. This instruction assumes that the court exercises a gatekeeper function of deciding whether the case is one to which the statute applies. The jury does not select the interest rate, which is seven percent as a matter of law. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1585 [36 Cal.Rptr.2d 343].)

It is settled that prejudgment interest cannot be awarded on damages for the intangible, noneconomic aspects of mental and emotional injury because they are inherently nonpecuniary, unliquidated, and not readily subject to precise calculation. (*Greater Westchester Homeowners Assn v. L.A.* (1979) 26 Cal.3d 86, 102–103 [160 Cal.Rptr.733, 603 P.2d 1329].) This instruction assumes that implicit in the reasoning for denying prejudgment interest for noneconomic damages is authorization to award it on all past economic damages, as these amounts are pecuniary and subject to more precise calculation. This instruction should not be given unless damages of this nature are claimed.

Since the statute is permissive, the jury has the discretion to deny prejudgment interest, even if it might otherwise be authorized. (See *King v. Southern Pacific Co.* (1895) 109 Cal.96, 99 [41 P. 786] [error to instruct jury that it must add prejudgment interest to award of damages].)

Whether interest may be compounded is also not resolved. (Compare *Douglas v. Westfall* (1952) 113 Cal.App. 2d 107, 112 [248 P.2d 68] [trustee cannot be charged with compound interest unless s/he has

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been guilty of some positive misconduct or willful violation of duty; in cases of mere negligence, no more than simple interest can properly be added] and *State v. Day* (1946) 76 Cal.App.2d 536, 554 [173 P.2d 399] [general rule is that interest may not be computed on accrued interest unless by special statutory provision, or by stipulation of the parties] with *Michelson, supra*, 29 Cal.App.4th at p. 1588 [jury is vested with discretion to award prejudgment interest under section 3288, including compound interest] and *McNulty v. Copp* (1954) 125 Cal.App.2d 697, 712 [271 P.2d 90] [compound interest is properly allowed on a claim for wrongful and fraudulent detention of personalty].)

**Sources and Authority**

- Interest on obligation not arising from contract. Civil Code section 3288.
- “Under Civil Code section 3288, the trier of fact may award prejudgment interest ‘[in] an action for the breach of an obligation not arising from contract, *and* in every case of oppression, fraud, or malice . . . .’ ” (*Bullis, supra*, 21 Cal.3d at p. 814, original italics.)
- “[U]nlike Civil Code section 3287, which relates to liquidated and contractual claims, section 3288 permits discretionary prejudgment interest for unliquidated tort claims.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at p. 102.)
- “In *Bullis*, we characterized prejudgment interest as ‘awarded to compensate a party for the loss of his or her property.’ The award of such interest represents the accretion of wealth which money or particular property could have produced during a period of loss. Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation. Furthermore, the date of loss of the property is usually ascertainable, thus permitting an accurate interest computation.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at pp. 102–103, internal citations omitted.)
- “The award of [prejudgment] interest represents the accretion of wealth which money or particular property could have produced during a period of loss.” (*Canavin v. Pac. Southwest Airlines* (1983) 148 Cal.App.3d 512, 525 [196 Cal.Rptr. 82].)
- “However, damages for the intangible, noneconomic aspects of mental and emotional injury are of a different nature. They are inherently nonpecuniary, unliquidated and not readily subject to precise calculation. The amount of such damages is necessarily left to the subjective discretion of the trier of fact. Retroactive interest on such damages adds uncertain conjecture to speculation. Moreover where, as here, the injury was of a continuing nature, it is particularly difficult to determine when any particular increment of intangible loss arose. Acknowledging the problem, the trial court arbitrarily resorted to an ‘averaging’ method applied to both the amount and duration of the loss. In our view this process was impermissibly speculative.” (*Greater Westchester Homeowners Assn, supra*, 26 Cal.3d at p. 103.)
- “The amount of damages awarded in a wrongful death case designed to compensate these noneconomic losses are akin to those awarded for pain and suffering and emotional distress in *Greater Westchester* and do not support prejudgment interest. However, plaintiffs are entitled to

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prejudgment interest on those damages attributable to an ascertainable economic value, such as loss of household services or earning capacity, as well as funeral and related expenses. “[It] is important to underscore that [an] award is invalid only to the extent it represents interest on “the intangible noneconomic aspects of mental and emotional injury” claimed by plaintiffs. [Citation.] If plaintiffs allege specific damage that is supported by tangible evidence, prejudgment interest may properly be awarded under Civil Code section 3288.’ ” (*Canavin, supra*, 148 Cal.App.3d at p. 527, internal citations omitted.)

- “Whether the proper interest rate was applied is a question of law. There is no legislative act specifying the rate of prejudgment interest for a fraud claim, and therefore the constitutional rate of 7 percent applies ... .” (*Michelson, supra*, 29 Cal.App.4th at p. 1585.)
- “Section 3288 ... allows interest from date of monetary loss at the discretion of the trier of fact even if the damages are unliquidated.” (*Stein v. Southern Cal. Edison Co.* (1992) 7 Cal.App.4th 565, 572 [8 Cal. Rptr. 2d 907].)
- “[T]his action lies in tort and it is the generally accepted view that [prejudgment] interest cannot be awarded on damages for personal injury.” (*Curtis v. State of California ex rel. Dept. of Transportation* (1982) 128 Cal.App.3d 668, 686 [180 Cal.Rptr. 843].)

***Secondary Sources***

6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1643-1646

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

## VF-400. Negligence—Single Defendant

We answer the questions submitted to us as follows:

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

\_\_\_ Yes \_\_\_ No

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

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

\_\_\_ Yes \_\_\_ No

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

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

- [a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

- [b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]



TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
**Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

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

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

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

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

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

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

## 4100. “Fiduciary Duty” Explained

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[A/An] [agent/stockbroker/real estate agent/real estate broker/corporate officer/partner/[insert other fiduciary relationship]] owes what is known as a fiduciary duty to [his/her/its] [principal/client/corporation/partner/[insert other fiduciary relationship]]. A fiduciary duty imposes on [a/an] [agent/stockbroker/real estate agent/real estate broker/corporate officer/partner/[insert other fiduciary relationship]] a duty to act with the utmost good faith in the best interests of [his/her/its] [principal/client/corporation/partner/[insert other fiduciary relationship]].

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New June 2006; Revised December 2010, December 2016

### Directions for Use

This instruction explains the nature of a fiduciary duty. It may be modified if other concepts involving fiduciary duty are relevant to the jury’s understanding of the case. For instructions on damages resulting from misrepresentation by a fiduciary, see CACI No. 1923, *Damages—“Out of Pocket” Rule*, and CACI No. 1924, *Damages—“Benefit of the Bargain” Rule*.

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433 [140 Cal.Rptr.3d 569].) No fraudulent intent is required. (See Civ. Code, § 1573 (defining “constructive fraud”).)

~~This instruction may be modified if other concepts involving fiduciary duty are relevant to the jury’s understanding of the case. For instructions on damages resulting from misrepresentation by a fiduciary, see CACI No. 1923, *Damages—“Out of Pocket” Rule*, and CACI No. 1924, *Damages—“Benefit of the Bargain” Rule*.~~

### Sources and Authority

- “A fiduciary relationship is ‘ ‘any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter’s knowledge or consent. . . . ’ ’ ’ ’ ” (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29 [130 Cal.Rptr.2d 860], internal citations omitted.)

~~• “The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach.” (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433 [140 Cal.Rptr.3d 569].)~~

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- “Whether a fiduciary duty exists is generally a question of law. Whether the defendant breached that duty towards the plaintiff is a question of fact.” (*Marzec v. Public Employees’ Retirement System* (2015) 236 Cal.App.4th 889, 915 [187 Cal.Rptr.3d 452], internal citation omitted.)
- “ “[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law.” [Citation.]’ ” (*Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1338 [147 Cal.Rptr.3d 772].)
- “[E]xamples of relationships that impose a fiduciary obligation to act on behalf of and for the benefit of another are ‘a joint venture, a partnership, or an agency.’ But, ‘[t]hose categories are merely illustrative of fiduciary relationships in which fiduciary duties are imposed by law.’ ” (*Cleveland, supra*, 209 Cal.App.4th at p. 1339, internal citation omitted.)
- “The investment adviser/client relationship is one such relationship, giving rise to a fiduciary duty as a matter of law.” (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 140 [173 Cal.Rptr.3d 356].)
- “There is a ‘strong public interest in assuring that corporate officers, directors, majority shareholders and others are faithful to their fiduciary obligations to minority shareholders.’ ” (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395 [178 Cal.Rptr.3d 604].)
- “Any persons who subscribe for stock have a right to do so upon the assumption that the promoters are using their knowledge, skill, and ability for the benefit of the company. It is, therefore, clear on principle that promoters, under the circumstances just stated, do occupy a position of trust and confidence, and it devolves upon them to make full disclosure.” (*Cleveland, supra*, 209 Cal.App.4th at p. 1339.)
- “[I]t is unclear whether a fiduciary relationship exists between an insurance broker and an insured.” (*Mark Tanner Constr. v. Hub Internat. Ins. Servs.* (2014) 224 Cal.App.4th 574, 585 [169 Cal.Rptr.3d 39].)
- “It is a question of fact whether one is either an investment adviser or a party to a confidential relationship that gives rise to a fiduciary duty under common law.” (*Hasso, supra*, 227 Cal.App.4th at p. 140, internal citations omitted.)
- “[A] third party who knowingly assists a trustee in breaching his or her fiduciary duty may, dependent upon the circumstances, be held liable along with that trustee for participating in the breach of trust.” (*Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 325 [166 Cal.Rptr.3d 116].)

**Secondary Sources**

8 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, § 58

Greenwald et al., California Practice Guide: Real Property Transactions, Ch. 2-C, *Broker's Relationship And Obligations To Principal And Third Parties*, ¶ 2:158 et seq. (The Rutter Group)

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Vapnek et al., California Practice Guide: Professional Responsibility, Ch. 6-D, *Professional Liability*, ¶ 6:425 et seq. (The Rutter Group)

10 California Forms of Pleading and Practice, Ch. 103, *Brokers*, § 103.31[1] (Matthew Bender)

14 California Forms of Pleading and Practice, Ch. 167, *Corporations: Directors and Management*, § 167.53 et seq. (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, §§ 427.12, 427.23 (Matthew Bender)

5 California Points and Authorities, Ch. 52, *Corporations*, § 52.112 et seq. (Matthew Bender)

6 California Legal Forms, Ch. 12C, *Limited Liability Companies*, § 12C.24[6] (Matthew Bender)

## DRAFT - NOT APPROVED BY JUDICIAL COUNCIL

## VF-4400. Misappropriation of Trade Secrets

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* **[the owner/a licensee]** of *[insert general description of alleged trade secret[s] subject to the misappropriation claim]*?  
 Yes  No

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

2. **[Was this/Were these]** *[select short term to describe, e.g., information]* secret at the time of the alleged misappropriation?  
 Yes  No

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

3. Did **[this/these]** *[e.g., information]* have actual or potential independent economic value because **[it was/they were]** secret?  
 Yes  No

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

4. Did *[name of plaintiff]* make reasonable efforts under the circumstances to keep the *[e.g., information]* secret?  
 Yes  No

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

5. Did *[name of defendant]* **[acquire/use [or] disclose]** the trade secret[s] by improper means?  
 Yes  No

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

6. Was *[name of defendant]*'s improper **[acquisition/use/ [or] disclosure]** of the *[e.g., information]* a substantial factor in causing **[name of plaintiff]** harm/ **[or]** *[name of*

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*defendant*] to be unjustly enriched]?

\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New December 2015; Revised December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 4401, *Misappropriation of Trade Secrets—Essential Factual Elements*, CACI No. 4402, *“Trade Secret” Defined*, CACI No. 4403, *Secrecy Requirement*, CACI No. 4404, *Reasonable Efforts to Protect Secrecy*, and CACI No. 4412, *“Independent Economic Value” Explained*.

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.

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

In question 1, briefly describe the material alleged to be a trade secret that is set forth in detail in element1 of CACI No. 4401. Then in question 2, select a short term to describe the material.

Additional questions may be added depending on whether misappropriation is claimed in question 5 by acquisition, disclosure, or use. See CACI No. 4405, *Misappropriation by Acquisition*, CACI No. 4406, *Misappropriation by Disclosure*, and CACI No. 4407, *Misappropriation by Use*, for additional elements that the jury should find in each kind of case.

Modify the claimed damages in question 7 as appropriate depending on the circumstances. (See CACI No. 4409, *Remedies for Misappropriation of Trade Secret*.) If unjust enrichment is alleged, additional questions on the value of the benefit to the defendant and the defendant's reasonable expenses should be included. (See CACI No. 4410, *Unjust Enrichment*.)

In cases involving more than one trade secret, the jury must answer all of the questions in the verdict form separately for each trade secret at issue.

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

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

### 5003. Witnesses

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A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness ~~did not tell the truth~~~~deliberately testified untruthfully~~ about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness ~~did not tell the truth~~~~testified untruthfully~~ about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [*insert any other impermissible form of bias*]].

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*New September 2003; Revised April 2004, April 2007, December 2012, December 2016*

#### Directions for Use



**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

This instruction may be given as either an introductory instruction before trial (see CACI No. 107) or as a concluding instruction.

The advisory committee recommends that this instruction be read to the jury before reading instructions on the substantive law.

In the last paragraph, the court may delete inapplicable categories of potential jury bias.

### **Sources and Authority**

- Role of Jury. Evidence Code section 312.
- Considerations for Evaluating the Credibility of Witnesses. Evidence Code section 780.
- Direct Evidence of Single Witness Sufficient. Evidence Code section 411.
- The willfully false witness instruction was formerly codified at Code of Civil Procedure section 2061. This statute was repealed in 1965 to avoid giving undue emphasis to this rule compared to other common-law rules. Refusal to give an instruction on this point is not error: “It should certainly not be deemed of vital importance to tell the ordinary man of the world that he should distrust the statements of a witness whom he believes to be a liar.” (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671 [288 P. 834].)
- Standard 10.20(a)(2) of the Standards for Judicial Administration provides: “In all courtroom proceedings, refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants.”
- Canon 3(b)(5) of the Code of Judicial Ethics provides: “A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.” Canon 3(b)(6) requires the judge to impose these standards on attorneys also.

### **Secondary Sources**

7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 299

Wegner, et al., California Practice Guide: Civil Trials & Evidence, Ch. 10-D, *Objectives Of Cross-Examination*, ¶ 10:91 et seq. (The Rutter Group)

Wegner, et al., California Practice Guide: Civil Trials & Evidence, Ch. 8E-F, *Limitations On Impeachment And Rehabilitation*, ¶ 8:2990 et seq. (The Rutter Group)

**DRAFT - NOT APPROVED BY JUDICIAL COUNCIL**

1A California Trial Guide, Unit 20, *Procedural Rules for Presentation of Evidence* (Matthew Bender)

14 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.110 et seq. (Matthew Bender)

Cotchett, California Courtroom Evidence, § 16.45 (Matthew Bender)

1 Matthew Bender Practice Guide: California Trial and Post-Trial Civil Procedure, Ch. 11, *Questioning Witnesses and Objections*, 11.03 et seq.

## Committee's Responses to Public Comments

### 107, 5003, *Witnesses*

#### **Civil Justice Association, by Hal Dasinger, Legislative Director**

We appreciate that one goal of composing jury instructions is to use plain language. However, in this instance, we believe that the current instruction more clearly imparts to the jury the meaningful distinction between testifying untruthfully with intent, and merely offering testimony that differs from other evidence. “Lied” is used broadly outside the courtroom and jurors may attach more or less intent to the word than is appropriate to the circumstances. In this case a precise instruction is preferable to one that is less precise but in less formal language. We recommend that “deliberately testified untruthfully” remain in the instruction.

#### **Committee Response:**

The committee has changed “lied” to “did not tell the truth.”

#### **State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

The word “lied” is strong language that to some jurors may mean something more than or different from “deliberately testified untruthfully.” We believe that rather than simplify the instruction, the word “lied” would create ambiguity. Rather than use the word “lie,” we would substitute “deliberately did not tell the truth” for “deliberately testified untruthfully” and “did not tell the truth” for “testified untruthfully.”

#### **Committee Response:**

The committee agreed and made these changes.

### 303, *Breach of Contract—Essential Factual Elements*

#### **Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We believe the new paragraph in “Directions for Use” would be clearer with a more definite reference to CACI No. 430, *Causation—Substantial Factor*. We encourage the Council to consider directions to give No. 430 in tandem with No. 303. In particular the discussion of the relationship between “substantial factor” and the “but-for” test is made clearer by linking No. 303 with No. 430. For example, the citation to *Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863 sets a very low bar for causing harm in a breach of contract action. The Directions for Use under CACI No. 430 make it clear that the substantial factor standard subsumes the “but-for” test—that is, the “but-for” test is still contained in the substantial factor standard, although the substantial factor standard goes beyond “but-for” alone. The citation to *Yanez v. Plummer* (2013) 221 Cal.App.4th 180 found in the Directions for Use under No. 430 makes this point more clearly:

“ . . . if a defendant’s negligence was a substantial factor in causing the plaintiff’s harm, then the defendant is responsible for the harm; a defendant cannot avoid responsibility just because some other person, condition or event was also a substantial factor in causing the plaintiff’s harm; but conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.” *Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.

CACI 303 and 430 still set a low bar for a substantial factor in causing harm especially when the *Haley* case is added to the Directions for Use. The new paragraph in the Directions for Use would be made clearer if it is explained that causation between the alleged breach and damage is an essential element of a claim for breach of contract. (*McDonald v. John P. Scripps Newspaper* (1989) 210 Cal. App. 3d 100, 104.) This is consistent with the new case excerpts added to “Sources and Authority.” Moreover,

alleged breach of contract harm or damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. (McDonald, supra, 210 Cal.App.3d at p. 104.)

**Committee Response:**

The proposed new paragraph cross refers to CACI No. 430.

In the next release cycle The committee will further consider the extent to which CACI No. 430 applies in an action for breach of contract.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**  
Agree

**Committee Response:**

No response is necessary.

**706, Basic Speed Law**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

The new Directions for Use raise the prospect of negligence per se findings or rulings based solely on speed in excess of the posted speed limit. We note that the citation to *Faselli v. Southern Pac. Co.* (1957) 150 Cal.App.2d 644 is deleted from the Sources and Authority. *Faselli* supported an instruction that proof of speed in excess of a prima facie limit is not enough, standing alone, to show negligence.

Inserting the proposed Directions for Use and the citation to *Hert v. Firestone Tire & Rubber Co.* and eliminating the cases currently listed under Sources and Authority may have the unintended consequence of per se rulings for excessive speed without consideration of the other enumerated factors such as weather, conditions, visibility and the particular facts of the case that will allow the finder of fact to determine reasonableness.

**Committee Response:**

The committee agrees that it is not negligence per se to drive above the posted speed limit. It is negligence per se to drive at an “unreasonable” speed. CACI No. 707 is the posted speed limit instruction, which addresses the points made in this comment, and which includes *Faselli* in the Sources and Authority.

**Orange County Bar Association, by Todd G. Friedland, President**

Minor suggested changes: 1) place a “.” after “per se.”; 2) delete “,” and 3) Delete parentheses for “(see” and 369].)” and make the sentence “See *Hert*. . . . 369] which establishes” without parentheses.

**Committee Response:**

The committee has decided not to change the title at this time.

We agree with the committee’s proposal to add the following sentence to the instruction to explain that, in the bad faith context, “unreasonably” means having “no proper cause”: “To act or fail to act ‘unreasonably’ means that the insurer had no proper cause for its conduct.”

**Committee Response:**

The committee understands the comment to suggest taking the citation within the sentence out of parentheses, which would be inconsistent with CACI format standards.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We agree with the new Directions for Use.

**Committee Response:**

No response is necessary.

In the Sources and Authority, *Maxwell v. Colburn* (1980) 105 Cal.App.3d 180 and *Monreal v. Tobin* (1998) 61 Cal.App.4th 1337 help to illustrate the application of the statute. We would not delete those citations.

**Committee Response:**

The committee has restored the excerpt from *Maxwell* to the Sources and Authority.

The committee did not restore the excerpt from *Monreal*. Any relevance of the case to reasonable or unreasonable speed is thin at most. Also, it is not in proper CACI format because it is not a direct quote from the opinion.

**710, Duties of Care for Pedestrians and Drivers in Crosswalk**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We suggest the elimination of the third paragraph of instruction No. 710:

“The failure of a pedestrian to exercise reasonable care does not relieve a driver of a vehicle from the duty of exercising reasonable care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.”

The proposed language appears to say that a driver who does not yield to a pedestrian in a crosswalk, regardless of the pedestrian’s contributing actions, will always have breached the duty of care owed.

The proposed language appears to negate the idea of comparative negligence and hold drivers at a higher standard. Since California Vehicle Code 21950(b) states that pedestrians are not relieved from duty of using due care and California Vehicle Code 21950(d) states that a driver is not relieved of duty of using due care for the safety of any pedestrian, this paragraph seems unnecessary and should be eliminated or revised to state: “The failure of one party to exercise reasonable care does not relieve another party from the duty of exercising reasonable care.”

**Committee Response:**

The statute gives both the pedestrian and the driver the duty of due care. Subsection (d) makes it clear that the driver still must exercise due care for the pedestrian’s safety, even if the pedestrian is not paying attention. The committee sees this as a provision providing for comparative fault, not negating it.

The proposed rewrite to make the language “driver-pedestrian neutral” would be a correct statement of the law, but not the statement presented in the statute.

**Orange County Bar Association, by Todd G. Friedland, President**

OCBA recommends keeping old CACI 710 as is. The revision appears to unnecessarily restrict the instruction to pedestrians in crosswalks and does not address other circumstances such as pedestrians not in crosswalks but rather entering the roadway to get into the driver’s seat of their parked car, among other examples.

Further, the proposed revisions, for no apparent reason, disregards the leading authorities on this topic, which hold that a driver must exercise a greater duty of care than a pedestrian because a driver is operating a “machine capable of” projecting negligence on another. (See *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314, 31 and *Cucinella v. Weson Biscuit Co.* (1954) 42 Cal.2d 71, 75-76.) Neither of these cases have been disapproved on any grounds.

If a new CACI re Crosswalk were to be approved, (which we do recommend), OCBA would use the proposed language of the instruction and the proposed language for the Directions for Use and of Sources and Authority.

**Committee Response:**

The committee understands the comment to approve the language of the proposed revised CACI No. 710, but to oppose the elimination of the current 710.

The committee recognizes that the proposed change is actually a new instruction, not really a revision. So it would be possible to make the proposed revised 710 a new instruction with a new number, while keeping current 710 also.

However, current CACI No. 710 simply says that drivers must use more care than pedestrians. The committee does not find this instruction to be particularly helpful to a jury. This general statement does not help a jury resolve the particular facts of their case. A comparative-fault analysis will be required. The committee has concerns that a jury might inappropriately raise the driver’s percent based solely on this instruction.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We agree with the revisions to the instruction and Directions for Use.

**Committee Response:**

No response is necessary.

We suggest adding the following to the Sources and Authority, which is excerpted from an instruction that *Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71 held “correctly states the law” and “should have been given” (id. at p. 81):

“ ‘The driver of a motor vehicle, when ordinarily careful, will be alertly conscious of the fact that he is in charge of a machine capable of projecting into serious consequences any negligence of his own. Thus his caution must be adequate to that responsibility as related to all the surrounding circumstances. A pedestrian, on the other hand, has only his own physical body to manage and with which to set in motion a cause of injury. While, usually, that fact limits his capacity to cause injury, as compared with a vehicle driver, still, in exercising ordinary care, he, too, will be alertly conscious of the mechanical power acting, or that may act, on the public roadway, and of the possible, serious consequences from any conflict between himself and such forces.’ ” (*Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 75-76, 81.)

We suggest including this excerpt because it provides the California Supreme Court’s guidance as to the reasonable care each party should use and may dispel confusion created by a split in authority over *Dawson v. Lalanne* (1937) 22 Cal.App.2d 314. *Dawson* held the trial court erred by refusing to give an instruction that both parties were “ ‘chargeable only with the exercise of ordinary care, but a greater amount of such care was required of the [motorist] . . . .’ ” (Id. at pp. 314-315.) While most courts have followed *Dawson*, at least one has rejected it. (See *Cucinella, supra*, 42 Cal.2d at p. 80 [“Since the

*Dawson* decision, supra, numerous other cases have approved instructions couched in substantially the same language”]; compare *Arentz v. Blackshere* (1967) 248 Cal. App. 2d 638, 640 [stating it was error to reject a similar instruction because “Cucinella forecloses argument that the rejection was not erroneous”] with *Rangel v. Badolato* (1955) 133 Cal. App. 2d 254, 259 [upholding the rejection of a similar instruction and criticizing the instruction as inaccurate].)

**Committee Response:**

The committee has added the proposed excerpt from *Cucinella* to the Sources and Authority. While far from recent, it is from the California Supreme Court and does speak to the relative duties of care of drivers and pedestrians, which is the subject of the crosswalk statute.

The committee does not feel it is necessary to address, in the Sources and Authority or otherwise, a possible split of authority that may have existed before the statute was enacted and before comparative fault.

To provide clarity, we would also shorten the first sentence of the paragraph quoting *Spann v. Ballesty* (1969) 276 Cal.App.2d 754:

~~“The phrase ‘immediate hazard’ in Vehicle Code § 21950 When the pedestrian suddenly leaves his place of safety, the vehicle must be so close as to constitute an immediate hazard. Such wording [in Veh. Code § 21950] ‘indicates the statute was intended to apply to those situations where a pedestrian unexpectedly asserts his right-of-way in an intersection at a time when the vehicle is so close that it is virtually impossible to avoid an accident. Typical situations include . . .’”~~

**Committee Response:**

The committee does not find the proposed language to be an improvement. Also, the language is not quite a direct quote from the case.

**2505, Retaliation—Essential Factual Elements**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We recommend that the instruction include the language “intentional and” before “substantial motivating factor” to provide instruction that more clearly defines the plaintiff’s burden.

We note that in the current Directions for Use the following appears:

“The committee believes that the instruction as given is correct for the intent element in a retaliation case. (Cf. *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127–132 [for disability discrimination, “substantial motivating reason” is only language required to express intent].)

However, the “motivating reason” does not adequately highlight that the plaintiff’s burden is to convince the jury that the retaliation was purposeful. (See *Scotch v. Art Inst. Of Orange County* (2009) 173 Cal.App.4th 986, 1020-21 (2009):

“By establishing a prima facie case of retaliation, Scotch shifted the burden to AIC of showing a legitimate, nonretaliatory reason for the adverse employment action. For the reasons we have explained, AIC met its burden. The burden therefore shifted back to Scotch to prove intentional retaliation. Scotch did not meet that burden: He failed to submit evidence showing AIC’s reasons were a pretext and the decision to reduce his course assignments had a retaliatory motive. (internal citations omitted.)

**Committee Response:**

The committee does not agree with the legal argument raised in the comment. The committee believes that intent is inherent in the requirement of a substantial motivating reason. The court in *Wallace* says as much, though limited to disability discrimination.

“The phrase ‘because of’ [in Gov. Code, § 12940(a)] is ambiguous as to the type or level of *intent* (*i.e., motivation*) and the connection between that motivation and the decision to treat the disabled person differently.” (245 Cal.App.4th at p. 127, emphasis added.)

Similarly, if engaging in activity protected by the FEHA is a substantial motivating reason for an employer’s adverse action, then it is implicit that the employer intended to retaliate.

A rehearing has been granted in the *Castro-Ramirez v. Dependable Highway Express, Inc.* case placing the force of its authority in a tentative state. For this reason, *Castro-Ramirez* should not be cited in the jury instructions.

**Committee Response:**

*Castro-Ramirez* has now been decided on rehearing. The language chosen for excerpting remains in the new opinion. However, it is unlikely that the case will be final before content is finalized for publication. Therefore, the committee will defer all references to *Castro-Ramirez* to the next release cycle.

We question the proposed addition of *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202 (2016) to the Sources and Authority. We recommend instead that the citation should be to *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1046-1047. The *Castro-Ramirez* excerpt is a direct citation from the California Supreme Court’s decision in *Yanowitz*.

The language in the proposed addition to Sources and Authority quoted from *Castro-Ramirez* is helpful and fair; however, *Yanowitz* should be cited as the source of the language.

**Committee Response:**

CACI standards for the Sources and Authority are to add an excerpt from a new case, even if it is quoting older authority. *Yanowitz* is currently excerpted.

Nevertheless, because *Castro-Ramirez* will likely not be final in time, this excerpt will be deferred.

**Orange County Bar Association, by Todd G. Friedland, President**

The proposed changes to the Directions for Use with respect to *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 127-132 comports with the decision in that case. However, it may be inappropriate to include a citation to *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202 because a rehearing was granted, and at least part of the case is no longer citeable (which part is being reheard is the question at this point).

**Committee Response:**

As noted above, *Castro-Ramirez* has now been decided on rehearing, but will likely not be final in time for publication.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We agree with the revision to the Directions for Use.



**Committee Response:**

No response is necessary.

In the Sources and Authority, we believe the quotation from *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 246 Cal.App.4th 180, 202, quoting *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028 should indicate that *Yanowitz* is the source of the quotation. Rather than omit the internal citations, we would include the internal citations to make this clear.

**Committee Response:**

Addressed above

We would add the following language to the excerpt in the Sources and Authority from *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, 128, reflecting the *Wallace* court's understanding of how the California Supreme Court in *Harris* resolved the noted ambiguity in the phrase "because of."

"Based on *Harris*, we conclude that an employer has treated an employee differently 'because of' a disability when the disability is a substantial motivating reason for the employer's decision to subject the employer to an adverse employment action."

**Committee Response:**

This language is relevant to disability discrimination. CACI No. 2505 is the retaliation instruction.

The beginning of the quotation from *Wallace* is missing an opening quotation mark, and there is an extra closing quotation mark after the words "because of."

**Committee Response:**

Any such errors will be corrected by Judicial Council staff copyeditors and the publisher's cite checkers..

### **2506, Limitation on Remedies—After-Acquired Evidence**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We recommend that the third element in the instruction be adopted without the words "as a matter of settled company policy."

The California Supreme Court's articulation of the after-acquired evidence standard in *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407 does not include the unduly restrictive "as a matter of settled company policy" language. The "settled company policy" language in the third element, which comes from *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842, 845-846, is too stringent. After-acquired evidence is not a complete defense to liability, but may foreclose otherwise available remedies (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 430-431), and an employer should be able to use the defense to limit those otherwise available remedies if it shows that it would have terminated the employee had it known of the misconduct. In *Salas*, the Supreme Court of California simply stated that the defense would apply "[w]hen the employer shows that information acquired after the employee's claim has been made would have led to a lawful discharge or other employment action . . ." (*Id.* at 430.)

The addition of the "settled company policy" language is unnecessarily restrictive. An employer should be able to show the jury that, even if a particular offense had not occurred before or that the employer had not yet confronted the exact type of misconduct presented in the case at issue, the employer nevertheless considers the misconduct so severe that it would nevertheless have made the decision to discharge/not hire the plaintiff. There is no need for the "settled" policy limitation. The employer still must convince

the jury that it “would have” discharged the employee had it known of the after-acquired evidence of misconduct, and that itself is a sufficiently stringent burden on the employer.

**Committee Response:**

“Settled company policy” has been in the instruction since original adoption. As such, it is beyond the scope of proposed revisions, and would have to be considered by the committee in the next release cycle.

However, while it may be true that *Salas* does not expressly *require* a settled company policy, there is mention of company policy in the case. The court notes that “The Court of Appeal concluded there was no triable issue of fact because a mere mismatch could have an innocent explanation and was not necessarily inconsistent with the evidence that defendant *employer had a settled policy of refusing to hire applicants who submitted false Social Security numbers.*” Hence, the court below applied a requirement that the termination for after-acquired evidence would have to be taken in accord with a settled company policy.

*Murillo* expressly says that “[t]he employer must show that such a firing would have taken place as a matter of settled company policy.” (65 Cal.App.4th at p. 846.) *Murillo* is binding authority until the supreme court says differently.

**Agnew Brusavich, Attorneys at Law, Torrance, by Bruce M. Brusavich**

Having been involved for many years in the political process in Sacramento on behalf of CAOC and as a member of the Civil Small Claims Advisory Committee where I worked through the deliberative process of drafting proposals to enact Rules of Court or propose changes in the law to deal with new court decisions or legislative enactments requiring such changes, I have a thorough understanding of the differences in the two processes. Given the fact that there has been no appellate decision critical of CACI 2334 which would justify the Committee's proposal to change the instruction, making such a proposal gives the appearance that the Committee is acquiescing to special-interest pressure for a change, something more common in the legislative process.

**Committee Response:**

The committee may recommend updates and revisions to a jury instruction without a case that expressly says that an instruction is wrong. If the case says that the elements of the claim are a, b, c, and d, and the instruction omits c, then c must be added, whether or not the court expressly says that the instruction is wrong.

Finally, I believe the proposed change to CACI 2334 would create jury confusion since essentially it asks them to answer the question as to whether or not the failure to accept the policy limit demand was unreasonable after already having to have made a determination as to whether or not the policy limit demand itself was reasonable. The proposed change is also likely to create years of appellate litigation which is not existing with the current instruction.

**Committee Response:**

Whether or not two different elements involving reasonableness are confusing, if it is the law, then the committee must present the elements in a way that attempts to lessen the confusion. Originally, the instruction read that the insurer “unreasonably failed to accept a reasonable [policy limits] settlement demand.” Arguably, the elements would be less confusing if separated into two, as was proposed in the draft posted for public comment. What would be most useful would be one case from the California Supreme Court resolving the issue.

We question the reference in the Directions for Use to *Salas* as creating uncertainty whether the doctrine of after-acquired evidence is an equitable defense. The California Supreme Court in *Salas* did not discuss

whether it was an equitable defense. Absence of this discussion does not establish uncertainty whether the defense is an equitable one.

**Committee Response:**

The committee believes that the Supreme Court’s failure to label after-acquired evidence as an equitable defense after clearly calling unclean hands one is something to be noted.

There is a minor typographical error in the second paragraph, 5th sentence: “elements could be found **be** the court” should read “elements could be found **by** the court.”

**Committee Response:**

This error has been fixed.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

The Directions for Use appropriately state that the doctrine of after-acquired evidence is not a complete defense to liability. Still, we believe the term “equitable defense” may create some confusion because an equitable defense ordinarily is a complete defense. We suggest using the term “equitable doctrine” in lieu of “equitable defense” wherever those words appear in the second paragraph.

We also suggest the following revisions for greater clarity:

“There is some uncertainty as to whether or not it is an equitable ~~defense doctrine~~. . . . If it is an equitable ~~defense doctrine~~, then the judge is the proper fact finder. Accordingly, the fact finding in the elements of the this instruction would be only advisory to the court, or the elements could be found by the court itself as the trier of fact.

**Committee Response:**

The committee agrees that “equitable doctrine” is a more accurate description than “equitable defense” and has made this change.

The committee does not find the other proposed changes to add any clarity.

**2540, Disability Discrimination—Disparate Treatment—Essential Factual Elements**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We do not support the change to a disability discrimination definition that includes this language: “It is not necessary for [*name of plaintiff*] to prove that [*name of defendant*] held any ill will or animosity toward [him/her] personally because [he/she] was [perceived to be] disabled.” A disability discrimination definition that does not require some sort of ill will or animosity is much too broad.

**Committee Response:**

Per *Wallace v. County of Stanislaus* (2016) 245 Cal.App.4th 109, no ill will or animosity is required in a disability discrimination case.

The excerpt from *Wallace* that begins with “Although the same statutory language,” is likely to promote confusion by suggesting that disability is more protected from discrimination than race, religion, national origin, age, and sex. The excerpt seems to say that disability is the most protected type of discrimination and minimizes these other forms of discrimination. We recommend the deletion of this excerpt.

**Committee Response:**

The excerpt is an exact quote from the opinion, which is all that CACI format requires. The committee has no concern that pointing out how disability differs from other protected classifications will be seen to minimize the others.

**Stephen M. Murphy, Attorney at Law, San Francisco**

I agree with the revision. However, element 4 should be amended to say "with or without accommodation" rather than "with accommodation" only.

**Committee Response:**

The proposed revision is not necessary. "With accommodation" is bracketed. If one leaves out the bracketed language, one has "without accommodation."

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We agree with the revisions to the instruction and the Directions for Use.

**Committee Response:**

No response is necessary.

We agree with the revisions to the Sources and Authority with the exception of the final bullet point on "animus," which we believe is not on point and therefore would omit.

**Committee Response:**

"Animus" relates to what is NOT required with regard to substantial motivating reason under *Harris*. The committee believes that it is very much on point.

**3061, *Discrimination in Business Dealings*,; 3063 and 3064, Ralph Act**

**Orange County Bar Association, by Todd G. Friedland, President**

Suggest moving "position in a labor dispute" to follow "immigration status" to keep Civil Code § 51 terms together (3063 and 3064).

**Committee Response:**

The committee agreed and has made this change.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We agree with the revisions to these instructions.

**Committee Response:**

No response is necessary.

Civil Code section 51(b) states the characteristics that are protected under sections 51.5 and 51.7, so we would add section 51 to the Sources and Authority.

**Committee Response:**

The committee agreed and has added Civil Code section 51(b) to the Sources and Authority.

**3103, *Neglect—Essential Factual Elements***

**Russell S. Balisok, Attorney at Law, Glendale**

The proposed change to 3103 element 1 speaks to "substantial" caretaking or custodial relationship with the victim. Could "substantial" be defined in the new instruction? I suggest the committee might look to CACI 430, *Causation: Substantial Factor*, for the definition of substantial, in order that the new 3013 be as understandable as possible to jurors.

**Committee Response:**

The committee does not find “substantial” to be a difficult concept for a jury to grasp.

CACI No. 430 is a very specialized instruction on causation in tort law generally. Its language is not necessarily appropriate in other situations in which substantiality is required absent some authority that says that it applies.

The language at element 1 referring to "ongoing responsibility for his/her basic needs" is problematic. My problem is with the phrase "basic needs." I recognize this language is derived from the Court's opinion in *Winn*. But confusion is sure to follow as to what "basic needs" means. In *Winn*, at the bottom of p. 158, the Court clearly includes the failure to provide medical care for physical and mental health needs as a "basic need." But will a juror so conclude without help?

In that vein, element 1 doesn't match up with the list of examples of neglect at element 3 of the instruction. In other words, uncertainty leading to confusion concerning "basic needs" could lead the jury to answer questions about "basic needs," "no" even though the jury was ready to find a failure to assist with personal hygiene, to provide medical care, to protect from health and safety hazards, prevent malnutrition, etc. I believe the simple solution to this problem is to alter element 3 to read as follows:

"That ... defendant failed to use that degree of care that a reasonable person in the same situation would have used in providing for the [victim's] basic needs including [insert one or more of the following]"

This suggested change would provide needed guidance to the jury by linking elements 1 and 3 while still limiting application of "neglect" to basic needs, and would minimize the problem that could arise with a misunderstanding and misapplication of an unaided requirement of "basic needs."

**Committee Response:**

The committee agreed with the comment and has made the suggested revision to element 3.

In *Winn*, the court expands on “basic needs” as things that “an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (63 Cal.4th at p. 158.) The committee has also added this language to element 1.

See also the expanded discussion of the proposed changes to this instruction in the committee’s report to the Judicial Council.

**California Advocates for Nursing Home Reform (CANHR), by Peter G. Lomhoff, Attorney at Law, Oakland**

The commentator argues for no change to the instruction. The complete comment is attached to the committee’s report to the Judicial Council.

**Committee Response:**

See report

**Consumer Attorneys of California, by Jacqueline Serna, Legislative Council**

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

**Committee Response:**

[See report](#)

**Sanford I. Horowitz, Attorney at Law, Santa Rosa**

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

**Committee Response:**

[See report](#)

**Jody C. Moore, Johnson Moore Attorneys at Law, Thousand Oaks**

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

**Committee Response:**

[See report](#)

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 160, stated that to be liable for neglect under Welfare and Institutions Code section 15610.57 a defendant must have "a caretaking or custodial relationship that arises where an elder or dependent adult depends on another for the provision of all or some of his or her fundamental needs." *Winn* also stated, "the Act does not apply unless the defendant health care provider had a *substantial* caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient." (63 Cal.4th at p. 152.) We believe the word "substantial" adds nothing helpful to the instruction and may cause misunderstanding or confusion, so we would delete the word "substantial," as in the language on page 160 of the opinion.

Accordingly, we would also delete "substantial" in the penultimate paragraph of the Directions for Use.

The Sources and Authority include the quote from *Winn* at page 152 with the word "substantial," but not the quote on page 160 without that word. We agree that only one of the two quotes is needed. We would choose the language on page 160 of the opinion (quoted above) without the word "substantial."

**Committee Response:**

[The committee feels compelled to heed \*Harris v. City of Santa Monica\* \(2013\) 56 Cal.4th 203, in which the Supreme Court held that "motivating reason" was insufficient with regard to the causation element in employment discrimination. Discrimination had to be a \*substantial\* motivating reason. \(56 Cal.4th at p. 232.\) The committee concludes that when the court requires substantiality, it is highly significant.](#)

[Therefore, if a caretaking relationship must be a substantial one, "substantiality" is an important requirement.](#)

**Valentine Law Group, Attorneys at Law, Mission Viejo, by Kimberly A. Valentine**

The commentator argues for no change to the instruction. The complete comment is attached to the committee's report to the Judicial Council.

**Committee Response:**

See report

### **3511, Permanent Severance Damages**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We note that the words “or by the construction and use of the [name of condemnor’s] proposed project, or by both” have been deleted from the second paragraph of the proposed instruction, but that the remainder of the instruction retains references to the condemnor’s proposed project in elements 2 and 3. We recommend these sentences be examined to determine whether they should be modified as well.

**Committee Response:**

It is the reference to “construction,” not the reference to the project that has caused the deletion of this language. Loss due to construction creates a potential temporary severance damages claim. The instruction is being revised to exclude its use for temporary severance damages.

We note the addition of “Permanent” to the instruction title and that the Directions for Use specify permanent loss of value. The proposed final case excerpt added to the Sources and Authority regarding temporary severance damages seems out of place. A separate instruction on temporary severance damages may be more useful to juries.

**Committee Response:**

The excerpt is a placeholder for now. The committee will in fact consider a new instruction on temporary severance in the next release cycle.

**Orange County Bar Association, by Todd G. Friedland, President**

The proposed modification includes the *City of Fremont* case both in the Directions for Use and the Sources and Authority. Accordingly, a *supra* cite should be given in the Sources and Authority. It should read, “(*City of Fremont, supra*, 160 Cal.App.4th at p. 676).”

**Committee Response:**

This error has been fixed.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

Agree

**Committee Response:**

No response is necessary.

### **3706, 3707, Special Employment**

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

The third paragraph of Directions for Use for No. 3706 states that the relevant secondary factors to use in deciding whether a special employment relationship exists are similar, but not identical, to the factors to be used in an independent contractor analysis. Since they are not identical we recommend citing two California Supreme Court decisions: *Patterson v. Domino’s Pizza, LLC* (2014), 60 Cal 4th 474, and *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal 4th 522).

**Committee Response:**

The Directions for Use currently cite *State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1013–1014 for this paragraph, which is more recent than *Patterson* and *Ayala*. CACI does not use string cites.

The Supreme Court has also described bad-faith conduct as a refusal to pay policy benefits "without proper cause." But each time it has used that formulation, it has done so in the context of a first-party claim for policy benefits) not in a third-party failure to settle context. (See *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 574 [first-party claim for insurer's failure to pay fire-loss claim].) I have not located a Supreme Court decision that has framed the bad-faith inquiry in the third party failure-to-settle context in terms of the insurer refusing to accept a reasonable settlement offer "without proper cause." Accordingly, I question whether the proposed change to the instruction to put the inquiry in those terms is accurate.

**Committee Response:**

The committee found this to be a valid point. It is among the reasons why the committee has elected not to propose the draft of CACI No. 2334 at this time, but to instead, frame the unresolved issues in the Directions for Use.

**Joel Davis, California Attorney General's Office, Supervising Deputy Attorney General, Tort and Condemnation Section**

Agree with proposed draft except for introductory paragraph that suggests a "special employment" relationship is necessarily created when one employer sends an employee to work for another employer. Recommend amending the language to instruct that a "special employment" relationship *may be* created in such a case, based on factors to be considered by the jury.

Suggest revising this sentence as follows:

"When one employer sends or loans an employee to work for another employer, a special employment relationship may be created that may affect the duties and responsibilities between the two employers and the employee."

**Committee Response:**

The committee agrees with the comment. Lending may (but not necessarily will) lead to a special employment relationship. But if the relationship is created, then duties and responsibilities *are* affected (not "may be" affected). In the proposed revision, the committee agrees with the first "may be," but not with "may affect."

**Orange County Bar Association, by Todd G. Friedland, President**

The OCBA agrees with the revised CACI Instruction with the following modifications. The last sentence of the first paragraph should read:

"This area of the law is commonly referred to as "special employment." The employee is referred to as a "borrowed employee."

Further, throughout the instruction where it states "special employee," that should be changed to "borrowed employee."

**Committee Response:**

"Special employee" cannot be changed to "borrowed employee" throughout.

For example, paragraph 3 says:



“In deciding whether [worker] was [employer]’s borrowed employee ...”

That is not the question that the jury must answer. It is not in dispute that the second employer has borrowed the worker. What the jury has to decide is whether the attributes of the lending relationship have changed its legal effects. For that inquiry, a unique legal label, such as “special” is needed.

In the Sources and Authority, the OCBA does not agree with removing the excerpt from *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 176. “The contract cannot affect the true relationship of the parties to it. Nor can it place an employee in a different position from that which he actually held.” This quote is still good law and should stay in the instruction.

**Committee Response:**

This language from *Kowalski* may be good law in other contexts, but here, it is not.

With regard to special employment, if the contract gives the borrowing employer the right to control, it makes no difference whether or not that control is actually exercised. Hence, the contract *can* place an employee in a different position from the one actually held.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

The last sentence in the proposed new first paragraph includes a superfluous definition of a term, “special employer,” that is never used either in the language read to the jury or the bracketed language guiding the court and counsel. We would omit this definition.

**Committee Response:**

Although the instruction never uses “special employer,” only “special employee” the committee believes that it is helpful to introduce both terms as they will both be encountered in authorities.

The term “borrowed employee” is more descriptive than “special employee” and would be more understandable to jurors. We would modify the last sentence in the proposed new first paragraph of the instruction as follows:

“In this situation, the borrowing employer is known as a ‘special employer’ and the employee is referred to as a “special borrowed employee.”

**Committee Response:**

The committee believes that “special borrowed employee” is just too many words and more confusing than helpful.

We would substitute “borrowed employee” for “special employee” in the second, third, and fourth paragraphs of the instruction.

**Committee Response:**

This point is addressed in the proposed response to the comment of the Orange County Bar Association above.

In the Directions for Use, we would delete the third and fourth sentences in the first paragraph as unnecessary. These sentences say:

“The borrowing employer is called the ‘special’ employer. The lending employer is sometimes called the ‘general’ employer, though use of that term may be confusing to a jury.”

**Committee Response:**

The committee believes that these sentences are helpful in clarifying the nomenclature in an area where the nomenclature can be very confusing. The committee is dropping the use of “general” entirely, though it will be found in the case law. An explanation of why is helpful to users.

In the second paragraph, first sentence, we would substitute “borrowed employee” for “special employee.” The sentence would read:

“The instruction as drafted is for use by the lending employer to claim that the worker should be considered as the borrowed employee of the borrowing employer.

**Committee Response:**

Addressed above

In the third paragraph, first sentence, we would substitute “borrowing employer” for “special employer.” (The sentence would read:

“In addition to the ~~alleged special~~ borrowing employer’s control over the employee, there are a number of relevant secondary factors to use in deciding whether a special employment relationship existed.”)

**Committee Response:**

The committee has made this change. Because it appears in the Directions for Use and not in the instruction text, the proposed revision simplifies the language without creating any lack of clarity for the jury.

### **3935, *Prejudgment Interest***

**Civil Justice Association of California, by Hal Dasinger, Legislative Director**

We have concerns that the proposed No. 3595 would cause confusion for a jury trying to determine how much interest to award and for what items of loss.

With regard to the amount of interest to award, reference to a capped amount in the instruction would address the issue.

**Committee Response:**

The committee does not understand what is meant by “a capped amount.” There is no cap on prejudgment interest other than the number produced by  $I = PRT$ .

As for the applicable items of loss, adding the following language will help identify the issue for the jury:

“If you decide that [*name of plaintiff*] is entitled to recover damages for past economic loss in one or more of the categories of damages that [she/he/it] claims, which will be identified in the special verdict form, then you must decide whether [he/she/it] should also receive prejudgment interest on each item of loss in those categories.”

The last sentence of the proposed instruction then becomes unnecessary.

We are concerned that to leave the instruction in its current form suggests that the jury can award interest in all items of loss first as opposed to identifying the applicable items first in the special verdict form.

**Committee Response:**

The committee does not share this concern. The special verdict form will be populated with the items of damages on which prejudgment interest can be added. The jury will not be able to award interest on all items of loss.

In the Directions for Use, the second paragraph contains language to the effect that the court should play a gatekeeper function in deciding whether it is the type of case to which the statute applies. The court also should play a gatekeeper function in determining whether the case involves the type of damages to which prejudgment interest can be applied. In other words, there are two gatekeeper functions (1) is it the type of claim for which prejudgment interest can be awarded?; (2) has there been some showing that plaintiff has suffered the type of economic, tangible, pecuniary loss to which prejudgment interest can be applied?

We recommend an addition to the Directions for Use to the effect of: “Give this instruction only if the court determines that the plaintiff has presented some evidence that it has suffered an economic, pecuniary loss, to which prejudgment interest can be applied.”

**Committee Response:**

The committee agrees with the comment. The opening sentence, which suggested uncertainty, has been removed. And a sentence has been added at the end of the third paragraph to make it explicit that the jury should not be instructed on prejudgment interest if no past economic damages are claimed.

**Orange County Bar Association, by Todd G. Friedland, President**

This is a new instruction, not a revision as sometimes indicated.

**Committee Response:**

The committee has not found any place where it is indicated that it is a revision. The date clearly says “New December 2016.”

This instruction needs revisions to conform to the requirements of Civil Code § 3288. For instance, the statute is applicable only if the action does not arise in contract or if the action is for oppression, fraud, or malice. The instruction should be rewritten in conformity with the format of others which require the jury to determine first that (a) the Defendant breached an obligation not arising from a contract, or (b) the Defendant acted with oppression, fraud, or malice then ... (remainder of current instruction).

**Committee Response:**

The instruction does not need to tell the jury in what kinds of cases prejudgment interest may be awarded. First, the committee has concluded that the jury does not decide that issue. If it’s because of the breach of an obligation not arising from contract, there will be instructions on the underlying noncontract cause of action. And if it’s because of oppression, fraud, or malice, there will be instructions on punitive damages.

The instruction cites for its authority Civil Code § 3287(a) but makes no distinctions between requirements of each. Clarity is needed as to whether this instruction is strictly a Civil Code § 3288 instruction, or a combination of Civil Code § 3288 and § 3287(a) or neither.

**Committee Response:**

The instruction is only for use under section 3288; not under section 3287. The committee has remove Section 3287 from the Sources and Authority in order to resolve this uncertainty.

This instruction “assumes” that the court exercises a “gate keeper function” in determining that the two statutes are applicable, but never defines nor clarifies the role of the court and the jury in any required determinations.

**Committee Response:**

The committee believes that the Directions for Use make it clear that there are unresolved questions about the respective roles of court and jury.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

The term “entry” in the language “the date of entry of your verdict” may be unfamiliar to some jurors. We would change this to “the date you sign your verdict.”

**Committee Response:**

The committee agrees and has made this change.

We would modify the second paragraph of the instruction as follows for greater simplicity and clarity:

“~~You will decide~~ ~~W~~whether [name of plaintiff] ~~should~~ receives an award of prejudgment interest on all, some, or none of any past economic damages that you may award ~~is within your discretion~~. If you award these damages to [name of plaintiff], you will be asked to decide on address prejudgment interest in the special verdict form.”

**Committee Response:**

The committee finds no improvement in the suggested language.

We find the first two sentences in the second paragraph of the Directions for Use unhelpful. The first sentence refers to uncertainty regarding the role of the jury in awarding prejudgment interest under Civil Code section 3288 without explaining the nature of the uncertainty. The second sentence refers to the gatekeeper function of the court in deciding whether the statute applies, but it is unclear how the court’s role in this regard differs from the court’s role in deciding whether to give any other instruction. We would delete these two sentences, and retain the third sentence.

**Committee Response:**

The committee believes that there is uncertainty and that these sentences are helpful. Nothing in the statute clarifies the roles of judge and jury in awarding prejudgment interest. And the case law is sparse and nondeterminative. One California Supreme Court case suggests that that jury should make the actual computation. (See *Greater Westchester Homeowners Assn v. L.A.* (1979) 26 Cal.3d 86, 102–103 [“Using recognized and established techniques a fact finder can usually compute with fair accuracy the interest on a specific sum of money, or on property subject to specific valuation.”].) Many on the committee find this language to be advisory rather than directive, and believe that the jury’s role should be limited to finding any facts that are required before the court can do the math.

We find most of the third paragraph in the Directions for Use unhelpful. It is not clear what is meant by “determining the number to be multiplied by the interest rate,” so we would strike the first sentence.

The second sentence refers to the reason for prohibiting prejudgment interest on noneconomic damages. The stated reason is potentially confusing because on the one hand, Civil Code section 3288 authorizes prejudgment interest on unliquidated tort claims (*Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 102; *Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 814), but on the other hand, prejudgment interest is not allowed on noneconomic damages because such damages “are

inherently nonpecuniary, unliquidated and not readily subject to precise calculation.” (*Greater Westchester*, at p. 103.)

The jury cannot award prejudgment interest on noneconomic damages. The instruction is limited to economic damages. In our view, the Directions for Use should state the rule and the appropriate use of the instruction without attempting to provide further explanation. We would strike the third paragraph of the Directions for Use and replace it with the following:

“Prejudgment interest cannot be awarded on noneconomic damages. (*Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 103.) This instruction allows prejudgment interest only on past economic damages.”

**Committee Response:**

As noted above, the committee has removed the first sentence. With that sentence gone, the committee believes that it has addressed the tenor of the comment. What remains (with a clarifying sentence added in response to the comment of the Civil Justice Association above) is just a slightly longer iteration of the comment’s proposed rewrite.

The first bullet point in the Sources and Authority cites Civil Code section 3287, subdivision (a), which authorizes prejudgment interest if damages are certain or capable of being made certain. But this instruction is based on section 3288, which separately authorizes prejudgment interest without relying on section 3287. We would delete the first bullet point.

**Committee Response:**

As noted above, section 3287 has been removed from the statutory authorities.

Some of the internal quotation marks in the seventh and eighth bullet points in the Sources and Authority should be corrected, and the ninth bullet point is missing a closing quotation mark.

**Committee Response:**

These errors have been fixed.

Verdict Form Prejudgment Interest Sentence—Example: Agree.

**Committee Response:**

No response is necessary.

**4100, “Fiduciary Duty” Explained**

**Orange County Bar Association, by Todd G. Friedland, President**

Per the proposed modification, the first sentence of the first paragraph of the Directions for Use would read, “[t]his instruction explains the nature of a fiduciary relationship.” It is believed, consistent with the title of the instruction and its text, that it explains the nature of a fiduciary duty and not that of a relationship.

**Committee Response:**

The committee has made this change.

**State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

Agree

**Committee Response:**

No response is necessary.

**VF-4400, *Misappropriation of Trade Secrets*****State Bar of California, Litigation Section, Jury Instructions Committee, by Ruben A. Ginsberg, Chair**

We would simplify the proposed new language in the Directions for Use as follows:

“In cases involving more than one trade secret, the jury must answer all of the questions in the verdict form separately for each trade secret at issue ~~identified by the plaintiff on which findings must be made.~~”

**Committee Response:**

The committee agrees and has made this change.



# CONSUMER ATTORNEYS OF CALIFORNIA

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August 11, 2016

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## **Re: Invitation to comment on proposed CACI Instruction 3103**

To whom it may concern:

I write on behalf of Consumer Attorneys of California (CAOC), California's state wide, non-partisan and non-profit association of plaintiff's attorneys. Our mission statement, in part, is to "seek justice for all... by advancing the common law and promoting the public good through the civil justice system and concerted efforts to secure safe products, a safe workplace, a clean environment, and quality health care." Many of our attorneys are leading experts in the field of elder abuse.

CAOC believes that the proposed changes to CACI 3103, the "Neglect – Essential Factual Elements," will result in unnecessary litigation; lengthen trial time, and useless confusion. **Thus we respectfully ask that CACI 3103 remain unchanged.** First, the proposed changes do not reflect an accurate statement of the law, and would expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult. Second, the language utilized is vague and renders the proposed instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The portion of the instruction at issue reads as follows:

**1. That [[name of individual defendant]/[name of employer defendant]'s employee] had a substantial caretaking or custodial relationship with care or custody of [name of plaintiff/decedent], involving ongoing responsibility for [his/her] basic needs;**

The changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. The *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to these instructions. In *Winn*, the Court held, in a narrow finding, that in the context of **outpatient medical treatment**, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider "has a caretaking or custodial relationship with the elder or dependent adult." (*Winn, supra*, 63 Cal.4th at 156, 165.) Nowhere in *Winn*, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant's responsibility for a plaintiff's basic needs. The court repeatedly states that care or custody is demonstrated by defendant's responsibility for "one or more of

## **Legislative Department**

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*an elder's basic needs* that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).)

Further, other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in the CACI instruction.

The *Winn* case which is cited in the use notes, and relied on as the authority for the purported changes was decided in the face of very specific facts (involving the outpatient care of an elder person who was competent and able bodied). Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. Nothing in the *Winn* decision changes the requirement that to prevail under the elder abuse act, a caretaking or custodial relationship must be demonstrated. The recommended change would require plaintiff to meet an additional burden of proof not required by the statute, and does so without providing guidance for the language recommended therein.

Finally, these changes do nothing to add to the clarity of the instruction and only serve to cause unnecessary confusion. The goal of the CACI instructions “is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*” The proposed change to CACI 3103 would not have this effect. By adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror.*” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms well beyond the reach or understanding of the average juror.

In light of the above, we respectfully request that the proposed change to CACI 3013 be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57.

Respectfully submitted,

/s/ Jacqueline Serna  
Jacqueline Serna, Esq.  
Legislative Counsel  
Consumer Attorneys of California



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August 11, 2016

Mr. Bruce Greenlee  
 ATTN: *Judicial Counsel of California*  
*Committee on Civil Jury Instructions*  
 455 Golden Gate Avenue  
 SF, CA 94102

To the Advisory Committee:

As an attorney specializing in elder abuse and neglect litigation for over 20 years, I submit the following comment on the proposed revision to CACI 3101, "Neglect Essential Factual Elements:"

I believe the revision is unwarranted as it will be confusing to the average juror. In fact, it appears that the purpose of the proposed revision is to discourage and restrict cases brought pursuant to the Elder Abuse and Adult Civil Protection Act (EADACPA) by requiring unnecessary language from the recently decided *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148 case. Specifically, the proposed revision requests that a defendant must be found to have had a "substantial" and ongoing caretaking and custodial relationship with the elder or dependent adult (*Winn*, supra 63 Cal.4th 156, 165). Again, this language is not necessary since the *Winn* court, and all other appellate law to date, acknowledges that the cases of *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care Inc. v. Superior Court* (2014) 32 Cal.4th 771 have already established the parameters, as required under EADACPA, of a "caretaking or custodial relationship" when a person or entity accepts responsibility for tending to the basic needs of an elder or dependent adult.

Regarding the above, the *Winn* case involved outpatient treatment of a fully competent individual and, thus, there was no "care or custody" allowing for an EADACPA claim.

Conversely, *Delaney* involved a facts scenario in which an elder in a Skilled Nursing Facility was neglected in an egregious fashion. Call bells were ignored, and a Stage IV coccyx pressure sore (a wound down to the bone) developed, leading to death as a result of failure to turn the patient in addition to a lack of basic hygiene: evidence presented at the three-week trial verified that the plaintiff, Rose Wallien, was left sitting in her own feces. Similarly, the *Covenant Care* facts involved allegations of a Skilled Nursing Facility and managing care company conspiring to keep an elder, Juan Inclan, in Skilled Nursing Facilities (rather than sending him to an acute hospital for care he needed regarding dehydration, malnourishment, and severe pressure sores) in order to improperly collect lucrative Medicare payments.

Critically analyzing changes of the language of jury instructions to achieve justice is important and difficult work and it is important to avoid unintended consequences that have the potential to undo important public policy as set forth by the legislature. This is especially true in the area of elder abuse that is needed (and stated in the W&I 15000 Statutes) to protect the “vulnerable elderly”.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sanford I. Horowitz", written over a horizontal line.

SANFORD I. HOROWITZ

**PETER G. LOMHOFF**  
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August 10, 2016

Mr. Bruce Greenlee, Attorney  
Judicial Council of California  
Advisory Committee on Civil Jury Instructions  
455 Golden Gate Avenue  
San Francisco, CA 94102

Re: Proposed Changes to CACI 3103

To the Advisory Committee:

I am writing on behalf of California Advocates for Nursing Home Reform ("CANHR") and myself to oppose the proposed changes to CACI 3103.

CANHR is a non-profit organization that works to improve the lives of the thousands of residents of nursing homes and other long term care facilities in California. Its activities include legislative advocacy, attorney training and referral, and other services for elderly nursing home residents and their families. It is probably the leading advocacy agency in California working on issues of elder abuse in nursing homes and other long term care facilities.

My practice is limited to injury and elder abuse cases arising in long term care facilities. I am one of the authors of CEB, California Elder Law Litigation, an Advocate's Guide. I have been amicus co-counsel in various published decisions in this field including *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, both cited in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal. 4th 148.

The proposed change to CACI 3103 should not be adopted because they would extend the holding of *Winn, supra*, to many elder abuse cases where the narrow holding of *Winn* does not apply. *Winn* concerns the meaning of "care or custody" in Welfare and Institutions Code §15610.57(a)(1) in the ambiguous situation of outpatient medical treatment, not when there is unambiguously care and custody as with an in-patient in a hospital or a resident in a nursing home or assisted living facility.

When a doctor treats an elderly patient on an intermittent basis, as in *Winn*, does the doctor have care or custody of the patient? That is not clear. It depends on the facts of the case, and the holding of *Winn* is helpful to find the answer. As *Winn* says, 63 Cal. 4th at 159, it is important to distinguish medical negligence and elder abuse, as was explained in *Delaney, supra*, discussing W.&I.C. §15657.2, and it is also important to recognize that

Mr. Bruce Greenlee, Attorney  
Judicial Council of California  
August 10, 2016  
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neglect under §15610.57 is “broad enough to encompass settings beyond residential care facilities,” 63 Cal. 4th at 160.

The import of this language in *Winn* must not be ignored: Care or custody is assumed in the residential care setting, and care or custody may or not occur with outpatient care by doctors, depending on the facts.

For these reasons it is important not to rewrite CACI 3103 to ask the jury to make additional new decisions that are not required by *Winn*.

It is appropriate to discuss the *Winn* case in the Sources and Authority section following CACI 3103, and perhaps in the Directions for Use as well, but *Winn* does not apply in cases of continuing care and custody in residential care facilities such as nursing homes and assisted living facilities.

The proposed changes to CACI 3103 do not accurately follow the holding of *Winn*, but the proposed changes would seriously mislead and confuse jurors about what §15610.57 means when the plain language of the statute is clear and obvious in institutional and other situations not covered by the holding in *Winn*.

For these reasons the present CACI 3103 should be left unchanged, with possibly some new Directions for Use explaining the application of *Winn* in the exceptional cases of non-residential care or custody.

Very truly yours,



Peter G. Lomhoff

cc: California Advocates for Nursing Home Reform

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**Gregory L. Johnson, Esq.**  
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August 11, 2016

Mr. Bruce Greenlee, Attorney  
 Judicial Council of California  
 Advisory Committee on Civil Jury Instructions  
 455 Golden Gate Avenue  
 San Francisco, CA 94102  
 e-mail: [civiljuryinstructions@jud.ca.gov](mailto:civiljuryinstructions@jud.ca.gov)

Re: CACI 3103 Comment

To the Advisory Committee:

I have been an elder abuse litigator since April 2000 when my own grandmother was neglected in a skilled nursing facility in Southern California. I was a defense litigator at the time and I saw firsthand how difficult it was to advocate for even the most basic care of our elders in nursing homes. I took \$500 inheritance and started my own practice advocating for this vulnerable population and haven't looked back.

Over the years, the legislative intent of encouraging capable advocates to take up the charge and privately enforce basic standards in elder care facilities has been slowly eroding. (Welf. & Inst. Code § 15600(j).) But elder abuse litigators are a tenacious bunch and we persevere. And while we must litigate within the bounds of the law, practically, we see unintended and at times illogical limitations being applied to the law by trial courts. I hope by submitting my comments on the proposed revision to CACI 3103, "Neglect – Essential Factual Elements" to avoid any such consequences.

I understand the committee's charge pursuant to California *Rules of Court*, Rule 2.1050 "is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*" But the proposed changes in this instance do not serve that purpose. First, the *Winn* decision did nothing to change the Elder Abuse Act definition of Neglect, or requirement for a custodial relationship, and therefore no changes should be made to the instructions. Second, the proposed changes do not reflect an accurate statement of the law, but rather expands a narrow judicial finding based on case-specific facts (i.e. outpatient clinic) to apply to all cases involving the neglect of an elder or dependent adult. This is an invitation for confusion when claims are brought against elder care facility operators, who were obviously the intended target of the Elder Abuse Act. Finally, the language utilized is hopelessly vague and ambiguous and as such renders the proposed

Mr. Bruce Greenlee, Attorney  
August 11, 2016  
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instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The proposed changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. In *Winn*, the Court held, in a narrow finding, that in the context of *outpatient medical treatment*, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider “has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 156, 165.)

First and foremost, “neglect” is defined by statute (Welf. & Inst. Code § 15610.67) and applies to those who have “care or custody” of an elder. *Winn* does not re-write the statute and therefore, CACI should not be rewritten to echo merely interpretative language. Other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in CACI instruction. If *Winn* is limited to its very specific facts (outpatient medical treatment, limited and sporadic contact), then it is unclear why a modification should be made to the instruction at all.

As acknowledged by the *Winn* court, *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771 (both Supreme Court decisions) already “illustrate” the “type of caretaking or custodial relationship that the Act requires: one where a party has accepted responsibility for attending to the basic needs of an elder or dependent adult.” As *Delaney* and *Covenant Care* have already provided guidance on this issue, and those cases did not prompt a proposed change in the CACI, the unique facts underlying *Winn* in no way warrant a change to the instruction and will not aid juries to reach the legally correct decision. As stated above, *Winn* establishes outpatient medical treatment is not a significant enough relationship to establish “care or custody”. The statute has not been changed by this decision (nor could it be), and neither should the CACI instruction regarding neglect, as defined by the statute.

Second, the insertion of the phrase “involving ongoing responsibility for [his/her] basic needs” leaves out words from *Winn* that are critically important and therefore, the suggested language is not an accurate statement of the law. Nowhere in the case, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant’s responsibility for a plaintiff’s basic needs. In *Winn*, the court repeatedly states that care or custody is demonstrated by defendant’s responsibility for “*one or more of an elder’s basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.*” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).)

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Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. The changes being proposed under the guise of improving jury decision-making have the actual impact, whether intended or not, of adding an additional factual element that is not required under a plain reading of the statute.

Moreover, by adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror.*” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms too subjective to be uniformly applied by jurors.

As to the term “substantial,” this word is of such significant legal impact, that in relation to its use in a finding of causation in a negligence action, the Judicial Council has gone so far as to create a separate jury instruction on the definition and use of the term “substantial.” (*See*, CACI 430, “Causation: Substantial Factor.”) As such, the vague nature of the term “substantial” has already been recognized in the context of the issue of causation, and the same concern exists here if not to a greater degree where jurors, in the context of the analysis of “care or custody” under the Act, will now be called upon to delineate or create the boundaries of this undefined term without instruction or direction.

The same is true as to the term “ongoing.” Here once again, jurors will be left to speculate as to the meaning of the term, particularly troublesome as the definition of “continuing to exist, happen or progress; continuing without reaching an end.” (Merriam-Webster’s Learner’s Dictionary, <<http://www.merriam-webster.com/dictionary/ongoing>> last accessed August 3, 2016.) The use of this term implies a relationship with defendant which endures, and will do nothing but confuse jurors as to what constitutes care or custody. For example, does “ongoing” mean conduct persisting over one 8 hour shift enough (such as neglecting one’s need to go emergently to the hospital upon a change of condition)? One day (such as failing to care for personal hygiene or implement a care plan requiring daily care)? One week (such as failing to turn and reposition with sufficient frequency to cause skin breakdown)? Entire period of residency in the elder care facility (such as systemic understaffing)?

Again, in light of the above, it is requested that the proposed change to CACI 3013 should be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57, as set forth by the Legislature.


Mr. Bruce Greenlee, Attorney  
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It is further requested that the phrase, "in the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist" be added before the final proposed "Direction for Use" such that said "Direction for Use" shall now read:

In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist, the Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.

Thank you for your attention to this important matter.

Very Truly Yours  
Johnson Moore



Jody C. Moore





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**August 8, 2016**  
**Via Electronic Mail**

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Judicial Council of California  
Advisory Committee on Civil Jury Instructions  
455 Golden Gate Avenue  
San Francisco, CA 94102  
e-mail: [civiljuryinstructions@jud.ca.gov](mailto:civiljuryinstructions@jud.ca.gov)

***Re: Proposed Changes to CACI 3103***

To the Advisory Committee:

I wish to submit the following comment on the proposed revision to CACI 3103, “Neglect – Essential Factual Elements.” Pursuant to California *Rules of Court*, Rule 2.1050, the goal of the CACI instructions “is to improve the quality of jury decision making by providing standardized instructions *that accurately state the law in a way that is understandable to the average juror.*” The proposed changes in this instance do not serve that purpose, as 1) the *Winn* decision did nothing to change the Elder Abuse Act or its application, and therefore no changes should be made to the instructions; 2) the proposed changes do not reflect an accurate statement of the law, and in fact attempt to expand a narrow judicial finding to apply to all cases involving the neglect of an elder or dependent adult; and 3) the language utilized is hopelessly vague and ambiguous and as such renders the proposed instruction unusable and will open the door to additional appellate practice seeking guidance as to the definitions of the terms employed.

The proposed changes rely exclusively upon the recent Supreme Court holding in *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148. In *Winn*, the Court held, in a narrow finding, that in the context of *outpatient medical treatment*, in order to be held liable under the Elder Abuse and Dependent Adult Civil Protection Act (*Welfare & Institutions Code* §15600, *et seq.*) it must be established that said health care provider “has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 156, 165.)

First and foremost, the true motive underlying the proposed changes, which is clearly an attempt to restrict Elder and Dependent Adult Neglect cases by imposing the “substantial” caretaking and custodial relationship language set forth in *Winn* on all neglect cases and not just

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Re: CACI 3103

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those involving outpatient medical treatment, is foreshadowed by the failure to accurately incorporate the language from *Winn* into the proposed new language. This is most easily illustrated by the phrase “involving ongoing responsibility for [his/her] basic needs.” Nowhere in the case, either in dicta or the holding does the Supreme Court suggest that the plaintiff can only meet the care or custody element of an elder abuse claim by demonstrating defendant’s responsibility for a plaintiff’s basic *needs*. The court repeatedly states that care or custody is demonstrated by defendant’s responsibility for “*one or more of an elder’s basic needs* that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn, supra*, 63 Cal.4th at 158 (emphasis added).) Other cases have described the type of relationship (i.e. custodial) required to satisfy “neglect” under the Elder Abuse Act, and none of those cases triggered the need for a fundamental change in CACI instruction. If *Winn* is limited to its very specific facts (outpatient medical treatment, limited and sporadic contact), then it is unclear why a modification should be made to the instruction at all. As acknowledged by the *Winn* court, *Delaney v. Baker* (1999) 20 Cal.4th 23 and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771 (both Supreme Court decisions) already “illustrate” the “type of caretaking or custodial relationship that the Act requires: one where a party has accepted responsibility for attending to the basic needs of an elder or dependent adult.” As *Delaney* and *Covenant Care* have already provided guidance on this issue, and those cases did not prompt a proposed change in the CACI, the unique facts underlying *Winn* in no way warrant a change to the instruction and will not aid juries to reach the legally correct decision. As stated above, *Winn* establishes outpatient medical treatment is not a significant enough relationship to establish “care or custody”. The statute has not been changed by this decision (nor could it be), and neither should the CACI instruction regarding neglect, as defined by the statute.

The changes being proposed under the guise of improving jury decision-making have the actual impact, whether intended or not, of adding an additional factual element that is not required under a plain reading of the statute.

Moreover, by adding language such as “substantial” and “ongoing,” the proposed changes all but guarantee confusion and misapplication of the law to the facts by jurors. Use of these terms violates the explicit provisions of *Rules of Court*, Rule 2.1050 which holds that these instructions are to “accurately state the law in a way *that is understandable to the average juror*.” The use of the terms “substantial” and “ongoing,” without definition or context, render said terms well beyond the reach or understanding of the average juror.

First, as to the term “substantial,” this word is of such significant legal impact, that in relation to its use in a finding of causation in a negligence action, the Judicial Council has gone so far as to create a separate jury instruction on the definition and use of the term “substantial.” (See, CACI 430, “Causation: Substantial Factor.”) As such, the vague nature of the term

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Page 3 of 4

“substantial” has already been recognized in the context of the issue of causation, and the same concern exists here if not to a greater degree where jurors, in the context of the analysis of “care or custody” under the Act, will now be called upon to delineate or create the boundaries of this undefined term without instruction or direction.

The same is true as to the term “ongoing.” Here once again, jurors will be left to speculate as to the meaning of the term, particularly troublesome as the definition of “continuing to exist, happen or progress; continuing without reaching an end.” (Merriam-Webster’s Learner’s Dictionary, <<http://www.merriam-webster.com/dictionary/ongoing>> last accessed August 3, 2016.) The use of this term implies a relationship with defendant which is never ending, and will do nothing but confuse jurors as to what constitutes care or custody.

Ultimately, nothing about the finding in *Winn* changes Elder Abuse or Dependent Adult law in California. At most, the case provides a definition for what constitutes “care or custody” and throughout the decision the California Supreme Court confirms that “care or custody” means accepting responsibility for attending to one or more of the basic needs of an elder or dependent adult. At most, the *Winn* decision provides that the Supreme Court found “care” and “custody” to be synonymous. One need look no further than the first sentence of the Conclusion in *Winn* wherein the Court held, “Plaintiffs cannot bring a claim of neglect under the Elder Abuse Act unless the defendant health care provider has a caretaking or custodial relationship with the elder or dependent adult.” (*Winn, supra*, 63 Cal.4th at 165.)

The *Winn* case which is cited in the use notes, and relied on as the authority for the purported changes was decided in the face of very specific facts, to wit the outpatient care of an elder person who was competent and able bodied. The recommended change would require plaintiff to meet an additional burden of proof not required by the statute, and does so without providing guidance for the language recommended therein. Nothing in the *Winn* decision changes the requirement that to prevail under the elder abuse act, a caretaking or custodial relationship must be demonstrated.

The *Winn* case arose out of the outpatient treatment of a fully competent elderly woman, and in that narrow context properly held there was no care or custody, and thus the Plaintiff could not adequately alleged neglect under the Elder Abuse Act. Nothing in the holding of *Winn* changes the statute or the law in California on the elements the plaintiffs must prove in order to prevail on a claim for neglect under the Act. As such, CACI 3103 must remain unchanged.

Again, in light of the above, it is requested that the proposed change to CACI 3013 should be rejected and that the language of said instruction be left unaltered such that it continues to mirror the language of the Elder Abuse Act at *Welf. & Inst. Code* §15610.57, as set forth by the Legislature.

Judicial Council of California

*Re: CACI 3103*

August 8, 2016

Page 4 of 4

It is further requested that the phrase, “in the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist” be added before the final proposed “Direction for Use” such that said “Direction for Use” shall now read:

In the case of a health care provider delivering care on an outpatient basis who fails to refer an elder or dependent adult/patient to a specialist, the Act does not extend to cases involving professional negligence against health-care providers as defined by the California Medical Injury Compensation Reform Act of 1975 (MICRA) unless the professional had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient.

Thank you for your attention to this important matter.

Respectfully Submitted,  
VALENTINE LAW GROUP, APC

Kimberly A. Valentine, Esq.

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

---

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?  
\_\_\_ Yes \_\_\_ No

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

2. Was *[name of defendant]*’s negligence a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

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

- [a. Past economic loss
- |                           |           |
|---------------------------|-----------|
| [lost earnings            | \$ _____] |
| [lost profits             | \$ _____] |
| [medical expenses         | \$ _____] |
| [other past economic loss | \$ _____] |
- Total Past Economic Damages: \$ \_\_\_\_\_]

- [b. Future economic loss
- |                             |           |
|-----------------------------|-----------|
| [lost earnings              | \$ _____] |
| [lost profits               | \$ _____] |
| [medical expenses           | \$ _____] |
| [other future economic loss | \$ _____] |
- Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

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

4. Was [name of plaintiff] negligent?  
\_\_\_ Yes \_\_\_ No

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

5. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?  
\_\_\_ Yes \_\_\_ No

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

6. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:  
[Name of defendant]: \_\_\_\_\_ %  
[Name of plaintiff]: \_\_\_\_\_ %  
TOTAL 100%

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

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

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

---

We answer the questions submitted to us as follows:

1. Was [name of first defendant] negligent?  
 Yes  No

Was [name of second defendant] negligent?  
 Yes  No

[Repeat as necessary for other defendants.]

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

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

Was [name of first defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
 Yes  No

Was [name of second defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
 Yes  No

[Repeat as necessary for other defendants.]

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]



[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

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

4. Was [name of plaintiff] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

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

5. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?  
\_\_\_\_ Yes \_\_\_\_ No

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

6. Was [name/description of first nonparty] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

Was [name/description of second nonparty] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

[Repeat as necessary for other nonparties.]

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

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

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

\_\_\_ Yes \_\_\_ No

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

\_\_\_ Yes \_\_\_ No

[Repeat as necessary for other nonparties.]

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

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

[Name of first defendant]:	___%
[Name of second defendant]:	___%
[Name of plaintiff]:	___%
[Name/description of first nonparty]:	___%
[Name/description of second nonparty]:	___%
<b>TOTAL</b>	<b>100%</b>

Signed: \_\_\_\_\_  
                    Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

---

We answer the questions submitted to us as follows:

1. Did [name of defendant] either intentionally injure [name of plaintiff] or act so recklessly that [his/her] conduct was entirely outside the range of ordinary activity involved in [specify sport or activity, e.g., touch football]?  
\_\_\_\_ Yes \_\_\_\_ No

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

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

[d. Future noneconomic loss, including [physical

pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

**Directions for Use**

*This verdict form is based on CACI No. 408, Primary Assumption of Risk—Liability of Coparticipant in Sport or Other Recreational Activity.*

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

~~*This verdict form is based on CACI No. 408, Primary Assumption of Risk—Liability of Coparticipant in Sport or Other Recreational Activity.*~~

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

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

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

**VF-404. Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches**

---

We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s *[coach/trainer/instructor]*?  
 Yes  No

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

2. [Did *[name of defendant]* intend to cause *[name of plaintiff]* injury or act recklessly in that *[his/her]* conduct was entirely outside the range of ordinary activity involved in teaching or coaching *[sport or other activity]* in which *[name of plaintiff]* was participating?  
 Yes  No]

[or]

[Did *[name of defendant]*'s failure to use reasonable care increase the risks to *[name of plaintiff]* over and above those inherent in *[sport or other activity]*?  
 Yes  No]

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
 [lost earnings \$ \_\_\_\_\_]  
 [lost profits \$ \_\_\_\_\_]  
 [medical expenses \$ \_\_\_\_\_]  
 [other future economic loss \$ \_\_\_\_\_]  
 Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
 Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

**Directions for Use**

This verdict form is based on CACI No. 409, Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches.

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

~~This verdict form is based on CACI No. 409, Primary Assumption of Risk—Liability of Instructors, Trainers, or Coaches.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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



**VF-405. Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] the [owner/operator/sponsor/other] of [e.g., a ski resort]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] do something or fail to do something that unreasonably increased the risks to [name of plaintiff] over and above those inherent in [sport or other recreational activity, e.g., snowboarding]?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

**Total Future Economic Damages: \$ \_\_\_\_\_]**

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New December 2015; Revised December 2016*

**Directions for Use**

This verdict form is based on CACI No. 410, *Primary Assumption of Risk—Liability of Facilities Owners and Operators and Event Sponsors*.

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

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

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

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see Bullis v. Security Pac. Nat'l Bank (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give*

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

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

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We answer the questions submitted to us as follows:

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

[or]

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

Yes  No

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

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

Yes  No]

[or]

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

Yes  No]

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

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

Yes  No

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

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

Yes  No

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

5. Did [name of alleged minor] later harm [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

6. Was [name of defendant]'s [selling/ giving] alcoholic beverages to [name of alleged minor] a substantial factor in causing [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                            **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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

### Directions for Use

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

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

VF-407. Strict Liability—Ultrahazardous Activities

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We answer the questions submitted to us as follows:

1. Was [name of defendant] engaged in [insert ultrahazardous activity]?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of plaintiff] harmed?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of plaintiff]'s harm the kind of harm that would be anticipated as a result of the risk created by [insert ultrahazardous activity]?  
\_\_\_ Yes \_\_\_ No

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

4. Was [name of defendant]'s [insert ultrahazardous activity] a substantial factor in causing [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; April 2007, December 2010, December 2016*

**Directions for Use**

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

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

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

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



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

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

**VF-408. Strict Liability for Domestic Animal With Dangerous Propensities**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* own, keep, or control a *[insert type of animal]*?  
\_\_\_ Yes \_\_\_ No

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

2. Did the *[insert type of animal]* have an unusually dangerous nature or tendency?  
\_\_\_ Yes \_\_\_ No

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

3. Did *[name of defendant]* know, or should *[he/she]* have known, that the *[insert type of animal]* had this nature or tendency?  
\_\_\_ Yes \_\_\_ No

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

4. Was the *[insert type of animal]*'s unusually dangerous nature or tendency a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; April 2007, December 2010, December 2016*

**Directions for Use**

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

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

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

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

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

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

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

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We answer the questions submitted to us as follows:

1. Did [name of defendant]'s dog bite [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of plaintiff] in a public place or lawfully on private property when [he/she] was bitten?  
\_\_\_ Yes \_\_\_ No

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

3. Was the dog a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

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

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

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

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

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-411. Parental Liability (Nonstatutory)**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] aware of habits or tendencies of [name of minor] that created an unreasonable risk of harm to other persons and led to [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] have the opportunity and ability to control the conduct of [name of minor]?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant] negligent because [he/she] failed to exercise reasonable care to prevent [name of minor]'s conduct?  
\_\_\_ Yes \_\_\_ No

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

4. Was [name of defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]



[b. **Future economic loss**  
     [lost earnings \$ \_\_\_\_\_]  
     [lost profits \$ \_\_\_\_\_]  
     [medical expenses \$ \_\_\_\_\_]  
     [other future economic loss \$ \_\_\_\_\_]  
**Total Future Economic Damages: \$ \_\_\_\_\_]**

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                     **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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

**Directions for Use**

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

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-500. Medical Negligence

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We answer the questions submitted to us as follows:

1. Was [name of defendant] negligent in the diagnosis or treatment of [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, December 2016*

#### **Directions for Use**

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

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

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

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

---

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?  
 Yes  No

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

2. Did *[name of plaintiff]* give *[his/her]* informed consent for the *[insert medical procedure]*?  
 Yes  No

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

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if he or she had been adequately informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?  
 Yes  No

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

4. Would *[name of plaintiff]* have consented to the *[insert medical procedure]* even if *[he/she]* had been given adequate information about the risks of the *[insert medical procedure]*?  
 Yes  No

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

5. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, June 2015, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual*

*Elements*, and CACI No. 550, *Affirmative Defense—Plaintiff Would Have Consented*.

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

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

---

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* perform a *[insert medical procedure]* on *[name of plaintiff]*?  
 Yes  No

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

2. Did *[name of plaintiff]* give *[his/her]* informed consent to the *[insert medical procedure]*?  
 Yes  No

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

3. Would a reasonable person in *[name of plaintiff]*'s position have refused the *[insert medical procedure]* if he or she had been fully informed of the possible results and risks of *[and alternatives to]* the *[insert medical procedure]*?  
 Yes  No

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

4. Was *[name of plaintiff]* harmed as a consequence of a result or risk that *[name of defendant]* should have explained before the *[insert medical procedure]* was performed?  
 Yes  No

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

5. Did *[name of defendant]* reasonably believe the *[insert medical procedure]* had to be done immediately in order to preserve the life or health of *[name of plaintiff]*?  
 Yes  No

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

6. Was *[name of plaintiff]* unconscious?  
 Yes  No



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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, October 2008, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements*, and CACI No. 554, *Affirmative Defense—Emergency*.

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

~~This verdict form is based on CACI No. 533, *Failure to Obtain Informed Consent—Essential Factual Elements*, and CACI No. 554, *Affirmative Defense—Emergency*.~~

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

**VF-702. Adult's Liability for Minor's Permissive Use of Motor Vehicle**

---

We answer the questions submitted to us as follows:

1. Was [name of minor] negligent in operating the vehicle?  
\_\_\_\_ Yes \_\_\_\_ No

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

2. Was [name of minor]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

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

3. Did [name of defendant], by words or conduct, give [name of minor] permission to use the vehicle?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

**Directions for Use**

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

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

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

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

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

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give*

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-703. Liability of Cosigner of Minor's Application for Driver's License**

---

We answer the questions submitted to us as follows:

1. Was [name of minor] negligent in operating the vehicle?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of minor]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

3. Did [name of defendant] sign [name of minor]'s application for a driver's license?  
\_\_\_ Yes \_\_\_ No

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

4. At the time of the collision, had [name of minor]'s driver's license been cancelled or revoked by the Department of Motor Vehicles?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

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

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

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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



VF-704. Negligent Entrustment of Motor Vehicle

---

We answer the questions submitted to us as follows:

1. Was *[name of driver]* negligent in operating the vehicle?  
 Yes  No

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

2. Did *[name of defendant]* own the vehicle operated by *[name of driver]* or did *[name of defendant]* have possession of the vehicle operated by *[name of driver]* with the owner's permission?  
 Yes  No

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

3. Did *[name of defendant]* know, or should *[he/she]* have known, that *[name of driver]* was incompetent or unfit to drive?  
 Yes  No

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

4. Did *[name of defendant]* permit *[name of driver]* to drive the vehicle?  
 Yes  No

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

5. Was *[name of driver]*'s incompetence or unfitness to drive a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

---

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

**Directions for Use**

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

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

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

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

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

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

VF-1000. Premises Liability—Comparative Negligence of Others Not at Issue

---

We answer the questions submitted to us as follows:

1. Did [name of defendant] [own/lease/occupy/control] the property?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of defendant] negligent in the use or maintenance of the property?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

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

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

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

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [own/lease/occupy/control] the property?  
\_\_\_ Yes \_\_\_ No

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

2. Was *[name of defendant]* negligent in the [use/maintenance] of the property?  
\_\_\_ Yes \_\_\_ No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

4. Did *[name of plaintiff]* enter on or use *[name of defendant]*'s property for a recreational purpose?  
\_\_\_ Yes \_\_\_ No

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

5. Did *[name of defendant]* willfully or maliciously fail to protect others from or warn others about a dangerous [condition/use/structure/activity] on the property?  
\_\_\_ Yes \_\_\_ No

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

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

- [a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]

[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

<b>[b. Future economic loss</b>	
[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, October 2008, December 2010, December 2014, December 2016*

**Directions for Use**

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

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



Question 5 should be modified if either of the other two exceptions to recreational immunity from Civil Code section 846 is at issue. (See CACI No. 1010.)

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

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

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

**VF-1002. Premises Liability—Comparative Fault of Plaintiff at Issue**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [own/lease/occupy/control] the property?  
\_\_\_ Yes \_\_\_ No

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

2. Was *[name of defendant]* negligent in the use or maintenance of the property?  
\_\_\_ Yes \_\_\_ No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

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

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

TOTAL \$ \_\_\_\_\_

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

5. Was [name of plaintiff] also negligent?  
\_\_\_\_ Yes \_\_\_\_ No

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

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[Name of defendant]: \_\_\_\_\_%  
[Name of plaintiff]: \_\_\_\_\_%  
TOTAL 100%

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

### Directions for Use

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

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

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

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

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

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

**VF-1100. Dangerous Condition of Public Property**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] own [or control] the property?  
 Yes  No

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

2. Was the property in a dangerous condition at the time of the incident?  
 Yes  No

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

3. Did the dangerous condition create a reasonably foreseeable risk that this kind of incident would occur?  
 Yes  No

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

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

[or]

[Did [*name of defendant*] have notice of the dangerous condition for a long enough time for [*name of defendant*] to have protected against it?]  
 Yes  No

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

5. Was the dangerous condition a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, December 2016t

Directions for Use

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

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

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

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

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

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

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

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We answer the questions submitted to us as follows:

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

[or]

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

Yes  No

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

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

Yes  No



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

6. [Answer if you answered yes to the first option for question 4: When you consider the likelihood and seriousness of potential injury, compared with the practicality and cost of either (a) taking alternative action that would not have created the risk of injury, or (b) protecting against the risk of injury, was *[name of defendant]*'s *[act/specify failure to act]* that created the dangerous condition reasonable under the circumstances?]  
\_\_\_ Yes \_\_\_ No

[or]

- [Answer if you answered yes to the second option for question 4: When you consider the likelihood and seriousness of potential injury, compared with (a) how much time and opportunity *[name of defendant]* had to take action, and (b) the practicality and cost of protecting against the risk of injury, was *[name of defendant]*'s failure to take sufficient steps to protect against the risk of injury created by the dangerous condition reasonable under the circumstances?]  
\_\_\_ Yes \_\_\_ No

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

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

- [a. Past economic loss
- |                           |           |
|---------------------------|-----------|
| [lost earnings            | \$ _____] |
| [lost profits             | \$ _____] |
| [medical expenses         | \$ _____] |
| [other past economic loss | \$ _____] |
- Total Past Economic Damages: \$ \_\_\_\_\_]

- [b. Future economic loss
- |                             |           |
|-----------------------------|-----------|
| [lost earnings              | \$ _____] |
| [lost profits               | \$ _____] |
| [medical expenses           | \$ _____] |
| [other future economic loss | \$ _____] |
- Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, April 2008, October 2008, June 2010, December 2010, December 2016*

**Directions for Use**

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

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

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

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

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

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

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

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

**VF-1200. Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [manufacture/distribute/sell] the *[product]*?  
\_\_\_\_ Yes \_\_\_\_ No

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

2. Did the *[product]* contain a manufacturing defect when it left *[name of defendant]*'s possession?  
\_\_\_\_ Yes \_\_\_\_ No

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

3. Was the manufacturing defect a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_\_ Yes \_\_\_\_ No

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

4. What are *[name of plaintiff]*'s damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff]* or *[name/description of other person]*.

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

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

5. Was [name of plaintiff] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

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

6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?  
\_\_\_\_ Yes \_\_\_\_ No

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

7. Was [name/description of other person] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

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

8. Was [name/description of other person]'s negligence a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

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

Signed: \_\_\_\_\_  
**Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

**Directions for Use**

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

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

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

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

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

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

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

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

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [manufacture/distribute/sell] the *[product]*?  
 Yes  No

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

2. Was the *[product]* [misused/ [or] modified] after it left *[name of defendant]*'s possession in a way that was so highly extraordinary that it was not reasonably foreseeable to [him/her/it]?  
 Yes  No

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

3. Was the [misuse/ [or] modification] the sole cause of *[name of plaintiff]*'s harm?  
 Yes  No

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

- [4. Is the *[product]* one about which an ordinary consumer can form reasonable minimum safety expectations?  
 Yes  No

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

- [5. Did the *[product]* fail to perform as safely as an ordinary consumer would have expected when used or misused in an intended or reasonably foreseeable way?  
 Yes  No

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

- [6. Did the risk of the *[product]*'s design outweigh the benefits of the design?  
 Yes  No

If your answer to either question 5 or question 6 is yes, answer question 7. If you answered no to both questions 5 and 6, stop here, answer no further questions, and have the presiding juror sign and date this form.]

7. Was the *[product]*'s design a substantial factor in causing harm to *[name of plaintiff]*?



\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

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

VF-1203. Strict Products Liability—Failure to Warn

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?  
 Yes  No

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

2. Did the [*product*] have potential [risks/side effects/allergic reactions] that were [known/ [or] knowable in light of the [scientific/ [and] medical] knowledge that was generally accepted in the scientific community] at the time of [manufacture/distribution/sale]?  
 Yes  No

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

3. Did the potential [risks/side effects/allergic reactions] present a substantial danger to persons using or misusing the [*product*] in an intended or reasonably foreseeable way?  
 Yes  No

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

4. Would ordinary consumers have recognized the potential [risks/side effects/allergic reactions]?  
 Yes  No

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

5. Did [*name of defendant*] fail to adequately warn [or instruct] of the potential [risks/side effects/allergic reactions]?  
 Yes  No

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

6. Was the lack of sufficient [instructions] [or] [warnings] a substantial factor in

causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### **Directions for Use**

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

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

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

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

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

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

**VF-1204. Products Liability—Negligence—Comparative Fault of Plaintiff at Issue**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [design/manufacture/supply/install/inspect/repair/rent] the *[product]*?  
\_\_\_ Yes \_\_\_ No

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

2. Was *[name of defendant]* negligent in [designing/manufacturing/supplying/installing/inspecting/repairing/renting] the *[product]*?  
\_\_\_ Yes \_\_\_ No

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

3. Was *[name of defendant]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

**TOTAL \$ \_\_\_\_\_**

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

**5. Was [name of plaintiff] negligent?**  
\_\_\_\_ Yes \_\_\_\_ No

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

**6. Was [name of plaintiff]'s negligence a substantial factor in causing [his/her] harm?**  
\_\_\_\_ Yes \_\_\_\_ No

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

**7. What percentage of responsibility for [name of plaintiff]'s harm do you assign to:**  
[Name of defendant]: \_\_\_\_\_ %  
[Name of plaintiff]: \_\_\_\_\_ %  
**TOTAL 100%**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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

### Directions for Use

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

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

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

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

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

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



VF-1205. Products Liability—Negligent Failure to Warn

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [manufacture/distribute/sell] the [*product*]?  
 Yes  No

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

2. Did [*name of defendant*] know or should [he/she/it] reasonably have known that the [*product*] was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner?  
 Yes  No

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

3. Did [*name of defendant*] know or should [he/she/it] reasonably have known that users would not realize the danger?  
 Yes  No

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

4. Did [*name of defendant*] fail to adequately warn of the danger [or instruct on the safe use of] the [*product*]?  
 Yes  No

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

5. Would a reasonable [manufacturer/distributor/seller] under the same or similar circumstances have warned of the danger [or instructed on the safe use of] the [*product*]?  
 Yes  No

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

6. Was [name of defendant]'s failure to warn a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

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

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

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* represent to *[name of plaintiff]* by a *[statement/description/sample/model/other]* that the *[product]* *[insert description of alleged express warranty]*?  
 Yes  No

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

2. Was the resulting bargain between the parties in which *[name of plaintiff]* decided to *[purchase/use]* the *[product]* based in any way on *[name of defendant]*'s *[statement/description/sample/model/other]*?  
 Yes  No

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

3. Did the *[product]* fail to *[perform]* *[or]* *[have the same quality]* as represented?  
 Yes  No

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

4. Was the failure of the *[product]* to *[perform]* *[or]* *[meet the quality]* as represented a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

**[b. Future economic loss**

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

**Total Future Economic Damages: \$ \_\_\_\_\_]**

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

**\$ \_\_\_\_\_]**

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

**\$ \_\_\_\_\_]**

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised February 2005, April 2007, December 2010, June 2011, December 2016*

**Directions for Use**

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

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

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

Under various circumstances, the plaintiff must also prove that he or she made a reasonable attempt to notify the defendant of the defect. Thus, if appropriate, the following question should be added before the

question regarding the plaintiff's harm: "Did [*name of plaintiff*] take reasonable steps to notify [*name of defendant*] within a reasonable time that the [*product*] [was not/did not perform] as requested?"

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

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We answer the questions submitted to us as follows:

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

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

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

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

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

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

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

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

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

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

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

[a. **Past economic loss**  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
**Total Past Economic Damages: \$ \_\_\_\_\_ ]**

[b. **Future economic loss**  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
**Total Future Economic Damages: \$ \_\_\_\_\_ ]**

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

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

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

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

The special verdict forms in this section are intended only as models. They may need to be modified



depending on the facts of the case.

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

Under various circumstances, the plaintiff must also prove that he or she made a reasonable attempt to notify the defendant of the defect. Thus, where appropriate, the following question should be added prior to the question regarding the plaintiff's harm: "Did [*name of plaintiff*] take reasonable steps to notify [*name of defendant*] within a reasonable time That the [*product*] [*was not/did not perform*] as requested?"

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

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

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

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We answer the questions submitted to us as follows:

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

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

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

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

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

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

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

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

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

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

6. Was the failure of the [*product*] to be suitable a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

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

VF-1300. Battery

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [touch [*name of plaintiff*]] [or] [cause [*name of plaintiff*] to be touched] with the intent to harm or offend [him/her]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [*name of plaintiff*] consent to be touched?  
\_\_\_ Yes \_\_\_ No

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

3. Was [*name of plaintiff*] harmed [or offended] by [*name of defendant*]'s conduct?  
\_\_\_ Yes \_\_\_ No

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

- [4. Would a reasonable person in [*name of plaintiff*]'s situation have been offended by the touching?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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

**Directions for Use**

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

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

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

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

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

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

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* touch *[name of plaintiff]* [or] cause *[name of plaintiff]* to be touched] with the intent to harm or offend *[him/her]*?  
 Yes  No

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

2. Did *[name of plaintiff]* consent to be touched?  
 Yes  No

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

3. Was *[name of plaintiff]* harmed [or offended] by *[name of defendant]*'s conduct?  
 Yes  No

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

- [4. Would a reasonable person in *[name of plaintiff]*'s situation have been offended by the touching?  
 Yes  No

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

5. Did *[name of defendant]* reasonably believe that *[name of plaintiff]* was going to harm *[him/her/[insert identification of other person]]*?  
 Yes  No

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

6. Did *[name of defendant]* use only the amount of force that was reasonably necessary to protect *[himself/herself/[insert identification of other person]]*?  
 Yes  No

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



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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

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

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

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

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

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

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

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

VF-1302. Assault

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* act, intending to cause a harmful [or an offensive] contact with *[name of plaintiff]* or intending to place [him/her] in fear of a harmful or an offensive contact?  
 Yes  No

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

2. Did *[name of plaintiff]* reasonably believe that [he/she] was about to be touched in a harmful [or an offensive] manner?  
 Yes  No

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

1. Did *[name of defendant]* threaten to touch *[name of plaintiff]* in a harmful [or an offensive] manner?  
 Yes  No

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

2. Did it reasonably appear to *[name of plaintiff]* that [he/she] was about to be touched in a harmful [or an offensive] manner?  
 Yes  No

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

3. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?  
 Yes  No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised October 2004, June 2005, April 2007, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 1301, *Assault—Essential Factual Elements*.

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

As appropriate to the facts of the case, read one of the bracketed alternative sets of questions 1 and 2.

~~This verdict form is based on CACI No. 1301, *Assault—Essential Factual Elements*.~~

Give the bracketed words in question 2 only if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

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

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

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

VF-1303. Battery by Peace Officer

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We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally touch [name of plaintiff] [or cause [name of plaintiff] to be touched]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] use unreasonable force in [arresting/preventing the escape of/overcoming the resistance of/[insert other applicable action]] [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

3. Did [name of plaintiff] consent to the use of that force?  
\_\_\_ Yes \_\_\_ No

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

4. Was [name of defendant]'s use of unreasonable force a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1305, Battery by Peace Officer.*

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

~~*This verdict form is based on CACI No. 1305, Battery by Peace Officer.*~~

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

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

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

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



VF-1400. False Imprisonment—No Arrest Involved

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We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally deprive [name of plaintiff] of [his/her] freedom of movement by use of [physical barriers/force/threats of force/menace/fraud/deceit/unreasonable duress]?  
\_\_\_\_ Yes \_\_\_\_ No

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

2. Did [name of plaintiff] consent?  
\_\_\_\_ Yes \_\_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 1400, No Arrest Involved— Essential Factual Elements.*

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

~~*This verdict form is based on CACI No. 1400, No Arrest Involved— Essential Factual Elements.*~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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

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

**VF-1401. False Imprisonment—No Arrest Involved—Affirmative Defense—Right to Detain for Investigation**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* intentionally deprive *[name of plaintiff]* of *[his/her]* freedom of movement by use of *[physical barriers/force/threats of force/menace/fraud/deceit/unreasonable duress]*?  
\_\_\_ Yes \_\_\_ No

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

2. Did *[name of defendant]* have the right to detain *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

3. Did *[name of plaintiff]* consent?  
\_\_\_ Yes \_\_\_ No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010*

**Directions for Use**

*This verdict form is based on CACI No. 1400, No Arrest Involved—Essential Factual Elements, and CACI No. 1409, Common Law Right to Detain for Investigation.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1400, No Arrest Involved—Essential Factual Elements, and CACI No. 1409, Common Law Right to Detain for Investigation.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases

requiring the jury to determine the amount of nominal damages.

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

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

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

VF-1402. False Arrest Without Warrant

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [arrest [name of plaintiff]/intentionally cause [name of plaintiff] to be arrested] without a warrant?  
\_\_\_ Yes \_\_\_ No

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

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

---

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

### Directions for Use

This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1401, *False Arrest Without Warrant by Peace Officer—Essential Factual Elements*.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 2 to direct the jury to skip question 3 and answer question 4 if they find no harm. Then add a new question 4: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 3 that the jury should not answer question 4. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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



**VF-1403. False Arrest Without Warrant by Peace Officer—Affirmative Defense—Probable Cause to Arrest**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* arrest *[name of plaintiff]* without a warrant?  
 Yes  No

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

2. [Did *[insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence]*?]

*[or]*

[Did *[insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed]*?]

Yes  No

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

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1401, False Arrest Without Warrant by Peace Officer—Essential Factual Elements, and CACI No. 1402, False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1401, False Arrest Without Warrant by Peace Officer—Essential Factual Elements, and CACI No. 1402, False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What

amount of nominal damages do you award [*name of plaintiff*]?" If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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

**VF-1404. False Arrest Without Warrant by Private Citizen—Affirmative Defense—Probable Cause to Arrest**

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We answer the questions submitted to us as follows:

1. **Did [name of defendant] intentionally cause [name of plaintiff] to be arrested without a warrant?**  
\_\_\_\_ Yes \_\_\_\_ No

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

2. **[Did [name of plaintiff] commit or attempt to commit a crime in [name of defendant]'s presence?]**

[or]

**[Was a felony committed and [insert facts, that if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony]?]**

\_\_\_\_ Yes \_\_\_\_ No

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

3. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**  
\_\_\_\_ Yes \_\_\_\_ No

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

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

[a. **Past economic loss**

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1403, False Arrest Without Warrant by Private Citizen—Essential Factual Elements, and CACI No. 1404, False Arrest Without Warrant—Affirmative Defense—Private Citizen—Probable Cause to Arrest.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1403, False Arrest Without Warrant by Private Citizen—Essential Factual Elements, and CACI No. 1404, False Arrest Without Warrant—Affirmative Defense—Private Citizen—Probable Cause to Arrest.~~

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

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

VF-1405. False Arrest With Warrant

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [arrest [name of plaintiff]/intentionally cause [name of plaintiff] to be arrested]?  
\_\_\_ Yes \_\_\_ No

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

2. [Insert question regarding facts supporting the invalidity of the warrant or the unlawfulness of the arrest, e.g., "Had the warrant for [name of plaintiff] 's arrest expired?"]  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant] 's conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 1405, False Arrest With Warrant—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1405, False Arrest With Warrant—Essential Factual Elements.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 3 to direct the jury to skip question 4 and answer question 5 if they find no harm. Then add a new question 5: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 4 that the jury should not answer question 5. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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



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

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

**VF-1406. False Arrest With Warrant—Peace Officer—Affirmative Defense—”Good-Faith”  
Exception**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* arrest *[name of plaintiff]*?  
 Yes  No

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

2. *[Insert question regarding facts supporting the invalidity of the warrant or the unlawfulness of the arrest, e.g., “Had the warrant for [name of plaintiff]’s arrest expired?”]*  
 Yes  No

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

3. Would the arrest warrant have appeared valid to a reasonably intelligent and informed person?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.**

4. Did *[name of defendant]* believe the warrant was valid?  
 Yes  No

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

5. Did *[name of defendant]* have a reasonable belief that *[name of plaintiff]* was the person referred to in the warrant?  
 Yes  No

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

6. Was *[name of defendant]*’s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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

### Directions for Use

This verdict form is based on CACI No. 1405, *False Arrest With Warrant—Essential Factual Elements*, and CACI No. 1406, *False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception*.

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

~~This verdict form is based on CACI No. 1405, *False Arrest With Warrant—Essential Factual Elements*, and CACI No. 1406, *False Arrest With Warrant—Peace Officer—Affirmative Defense—“Good-Faith” Exception*.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 6 to direct the jury to skip question 7 and answer question 8 if they find no harm. Then add a new question 8: “What amount of nominal damages do you award [*name of plaintiff*]?” If this is done, add a direction after question 7 that the jury should not answer question 8. Please note that the committee has found no cases requiring the jury to determine the amount of nominal damages.

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

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

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

**VF-1407. False Imprisonment—Unnecessary Delay in Processing/Releasing**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* hold *[name of plaintiff]* in custody?  
 Yes  No

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

2. Was there an unnecessary delay *[insert facts, e.g., "in taking [name of plaintiff] before a judge" or "in releasing [name of plaintiff]" ]*?  
 Yes  No

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

3. Did *[name of plaintiff]* consent to the delay?  
 Yes  No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1407, Unnecessary Delay in Processing/Releasing—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1407, Unnecessary Delay in Processing/Releasing—Essential Factual Elements.~~

If the jury returns a verdict of no harm, the plaintiff is still entitled to an award of nominal damages, such as one dollar. If nominal damages are being sought, modify the directions after question 4 to direct the jury to skip question 5 and answer question 6 if they find no harm. Then add a new question 6: “What amount of nominal damages do you award [name of plaintiff]?” If this is done, add a direction after question 5 that the jury should not answer question 6. Please note that the committee has found no cases

requiring the jury to determine the amount of nominal damages.

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

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

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

**VF-1500. Malicious Prosecution—Former Criminal Proceeding**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in causing [name of plaintiff] to be prosecuted [or in causing the continuation of the prosecution]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] act primarily for a purpose other than that of bringing [name of plaintiff] to justice?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]



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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2008, December 2010, December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 1500, *Former Criminal Proceeding*. This form can be adapted to include the affirmative defense of reliance on counsel. See VF-1502 for a form that includes this affirmative defense.

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

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1500, *Former Criminal Proceeding*, elements 2 and 3.)

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

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

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

**VF-1501. Malicious Prosecution—Wrongful Use of Civil Proceedings**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] a lawsuit against [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, April 2008, December 2010, June 2011, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.*

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

~~*This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.*~~

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3.)

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

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

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

**VF-1502. Malicious Prosecution—Wrongful Use of Civil Proceedings—Affirmative Defense—  
Reliance on Counsel**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] the lawsuit against [name of plaintiff]?  
 Yes  No

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

2. Did [name of defendant] make a full and honest disclosure of all the important facts known to [him/her] to [his/her] attorney?  
 Yes  No

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

3. Did [name of defendant] reasonably rely on [his/her] attorney's advice?  
 Yes  No

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

4. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?  
 Yes  No

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

5. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
 Yes  No

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

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

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, April 2008, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1501, *Wrongful Use of Civil Proceedings*, and CACI No. 1510, *Affirmative Defense—Reliance on Counsel*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1501, elements 2 and 3.)

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

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

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



**VF-1503. Malicious Prosecution—Wrongful Use of Administrative Proceedings**

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We answer the questions submitted to us as follows:

1. Was [name of defendant] actively involved in bringing [or continuing] an administrative proceeding against [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of administrative body] conduct an independent investigation?  
\_\_\_ Yes \_\_\_ No

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

3. Did [name of defendant] act primarily for a purpose other than succeeding on the merits of the claim?  
\_\_\_ Yes \_\_\_ No

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

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. **Future economic loss**  
       [lost earnings                     \$ \_\_\_\_\_]  
       [lost profits                       \$ \_\_\_\_\_]  
       [medical expenses               \$ \_\_\_\_\_]  
       [other future economic loss \$ \_\_\_\_\_]  
   **Total Future Economic Damages: \$ \_\_\_\_\_ ]**

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

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

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                   **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, April 2008, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1502, *Wrongful Use of Administrative Proceedings*. See VF-1502 for a form that includes the affirmative defense of reliance on counsel.

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

If there are disputed issues of fact on the elements of probable cause or favorable termination that the jury must resolve, include additional questions or provide special interrogatories on these elements. (See CACI No. 1502, elements 3 and 4.)

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

VF-1504. Abuse of Process

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [insert legal procedure, e.g., "take the deposition of [name of deponent]"]?  
\_\_\_ Yes \_\_\_ No

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

2. Did [name of defendant] intentionally use this legal procedure to [insert alleged improper purpose that procedure was not designed to achieve]?  
\_\_\_ Yes \_\_\_ No

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

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

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

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1520, Abuse of Process—Essential Factual Elements.*

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

~~*This verdict form is based on CACI No. 1520, Abuse of Process—Essential Factual Elements.*~~

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

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

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

**VF-1600. Intentional Infliction of Emotional Distress**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]*'s conduct outrageous?  
 Yes  No

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

2. [Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?] [or]

[Did *[name of defendant]* act with reckless disregard of the probability that *[name of plaintiff]* would suffer emotional distress, knowing that *[name of plaintiff]* was present when the conduct occurred?]

Yes  No

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

3. Did *[name of plaintiff]* suffer severe emotional distress?  
 Yes  No

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

4. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

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

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1600, Intentional Infliction of Emotional Distress—Essential Factual Elements.*

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

~~*This verdict form is based on CACI No. 1600, Intentional Infliction of Emotional Distress—Essential Factual Elements.*~~

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

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

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



**VF-1601. Intentional Infliction of Emotional Distress—Affirmative Defense—Privileged Conduct**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* exercising *[his/her]* legal rights or protecting *[his/her]* economic interests?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, skip questions 2 and 3 and answer question 4.

2. Was *[name of defendant]*'s conduct lawful and consistent with community standards?  
 Yes  No

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

3. Did *[name of defendant]* have a good-faith belief that *[he/she]* had a legal right to engage in the conduct?  
 Yes  No

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

4. Was *[name of defendant]*'s conduct outrageous?  
 Yes  No

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

5. [Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?]

[or]

[Did *[name of defendant]* act with reckless disregard of the probability that *[name of plaintiff]* would suffer emotional distress, knowing that *[name of plaintiff]* was present when the conduct occurred?]

Yes  No

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

6. Did *[name of plaintiff]* suffer severe emotional distress?  
\_\_\_ Yes \_\_\_ No

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

7. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?  
\_\_\_ Yes \_\_\_ No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

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

Total Future Economic Damages: \$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

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

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 1600, *Intentional Infliction of Emotional Distress—Essential Factual Elements*, and CACI No. 1605, *Intentional Infliction of Emotional Distress—Affirmative Defense-Privileged Conduct*.*

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

~~*This verdict form is based on CACI No. 1600, *Intentional Infliction of Emotional Distress—Essential Factual Elements*, and CACI No. 1605, *Intentional Infliction of Emotional Distress—Affirmative Defense-Privileged Conduct*.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

**VF-1602. Intentional Infliction of Emotional Distress—Fear of Cancer, HIV, or AIDS**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]*'s conduct outrageous?  
 Yes  No

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

2. Did *[name of defendant]*'s conduct expose *[name of plaintiff]* to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]*?  
 Yes  No

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

3. **[Did *[name of defendant]* intend to cause *[name of plaintiff]* emotional distress?] [or]**

**[Did *[name of defendant]* act with reckless disregard of the probability that *[[name of plaintiff]/the group of individuals including *[name of plaintiff]*]* would suffer emotional distress, knowing that *[he/she/they]* *[was/were]* present when the conduct occurred?]**  
 Yes  No

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

4. Did *[name of plaintiff]* suffer severe emotional distress from a reasonable fear of developing *[insert cancer, HIV, or AIDS]*?  
 Yes  No

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

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s severe emotional distress?  
 Yes  No

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

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

[a. Past economic loss

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

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1601, *Intentional Infliction of Emotional Distress—Fear of*

*Cancer, HIV, or AIDS.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 1601, *Intentional Infliction of Emotional Distress—Fear of Cancer, HIV, or AIDS.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1603. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* negligent?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* suffer serious emotional distress?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s negligence a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, June 2014, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1620, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-1604. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—  
Bystander**

---

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* negligently cause *[injury to/the death of]* *[name of victim]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. When the *[describe event, e.g., traffic accident]* that caused *[injury to/the death of]* *[name of victim]* occurred, was *[name of plaintiff]* present at the scene?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]* then aware that the *[e.g., traffic accident]* was causing *[injury to/the death of]* *[name of victim]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* suffer serious emotional distress?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, June 2014, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1621, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1605. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS**

---

We answer the questions submitted to us as follows:

1. Was [name of plaintiff] exposed to [insert applicable carcinogen, toxic substance, HIV, or AIDS] as a result of [name of defendant]’s negligence?  
\_\_\_\_ 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] suffer serious emotional distress from a fear that [he/she] would develop [insert applicable cancer, HIV, or AIDS] as a result of the exposure?  
\_\_\_\_ 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 reliable medical or scientific opinion confirm that it is more likely than not that [name of plaintiff] will develop [insert applicable cancer, HIV, or AIDS] as a result of the exposure?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]’s negligence a substantial factor in causing [name of plaintiff]’s serious emotional distress?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]’s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, June 2014, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1622, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1606. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct**

---

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* exposed to *[insert applicable carcinogen, toxic substance, HIV, or AIDS]* as a result of *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* act with *[malice/oppression/fraudulent intent]* because *[insert one or more of the following, as applicable:]*

*[[name of defendant] intended to cause injury to [name of plaintiff]?] [or]*

*[[name of defendant]'s conduct was despicable and was carried out with a willful or conscious disregard of [name of plaintiff]'s rights or safety?] [or]*

*[[name of defendant]'s conduct was despicable and subjected [name of plaintiff] to cruel and unjust hardship in conscious disregard of [name of plaintiff]'s rights?] [or]*

*[[name of defendant] intentionally misrepresented or concealed a material fact known to [name of defendant], intending to cause [name of plaintiff] harm?]*

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* suffer serious emotional distress from a fear, confirmed by reliable medical or scientific opinion, that *[name of plaintiff]*'s risk of developing *[insert applicable cancer, HIV, or AIDS]* was significantly increased by the exposure and has resulted in an actual risk that is significant?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s serious emotional distress?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, June 2014, December 2016

Directions for Use



This verdict form is based on CACI No. 1623, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1700. Defamation per se (Public Officer/Figure and Limited Public Figure)**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., "[name of plaintiff] had committed a crime"]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the statement false?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?  
 Yes  No

If your answer to question 5 is yes, then answer questions 6, 7, and 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

**ACTUAL DAMAGES**

6. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]'s actual damages for:
- a. Harm to [name of plaintiff]'s property, business, trade, profession, or occupation? \$ \_\_\_\_\_
  - b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements? \$ \_\_\_\_\_
  - c. Harm to [name of plaintiff]'s reputation? \$ \_\_\_\_\_
  - d. Shame, mortification, or hurt feelings? \$ \_\_\_\_\_

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

**ASSUMED DAMAGES**

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her] reputation, and for shame, mortification, or hurt feelings? You must award at least a nominal sum.  
\$ \_\_\_\_\_

**PUNITIVE DAMAGES**

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2005, April, 2008, October 2008, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 1700, ~~Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)~~.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1700, Defamation per se—Essential Factual Elements (Public Officer/Figure and Limited Public Figure).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Omit question 10 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~*

**VF-1701. Defamation per quod (Public Officer/Figure and Limited Public Figure)**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make the following statement to [a person/persons] other than [*name of plaintiff*]? [*Insert claimed per quod defamatory statement.*]  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [*name of plaintiff*]? \   
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the statement false?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*] prove by clear and convincing evidence that [*name of defendant*] knew the statement was false or had serious doubts about the truth of the statement?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Is the statement, because of facts known to the people who heard or read it, the kind that would tend to injure [*name of plaintiff*] in [his/her] occupation?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] suffer Harm to [his/her] property, business, profession, or occupation [including money spent as a result of the statement]?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

**ACTUAL DAMAGES**

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer questions 8. If you answered no, skip question 8 and answer question 9.

8. What are [name of plaintiff]'s actual damages? [\$\_\_\_\_\_]

**PUNITIVE DAMAGES**

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?  
\_\_\_ Yes \_\_\_ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What is your award of punitive damages, if any, against [name of defendant]?  
\$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised December 2005, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1701, Defamation per quod-Essential Factual Elements (Public Officer/Figure and Limited Public Figure).*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*.~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1701, *Defamation per quod—Essential Factual Elements (Public Officer/Figure and Limited Public Figure)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 10 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-1702. Defamation per se (Private Figure—Matter of Public Concern)**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the statement false?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

**ACTUAL DAMAGES**



6. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]* actual harm?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are *[name of plaintiff]*'s actual damages for:
- a. Harm to *[name of plaintiff]*'s property, business, trade, profession, or occupation? \$ \_\_\_\_\_
  - b. Expenses *[name of plaintiff]* had to pay as a result of the defamatory statements? \$ \_\_\_\_\_
  - c. Harm to *[name of plaintiff]*'s reputation? \$ \_\_\_\_\_
  - d. Shame, mortification, or hurt feelings? \$ \_\_\_\_\_

[If *[name of plaintiff]* has not proved any actual damages for either c or d, answer question 8. If *[name of plaintiff]* has proved actual damages for both c and d, skip questions 8 and 9 and answer question 10.]

#### ASSUMED DAMAGES

8. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of defendant]* knew the statement was false or had serious doubts about the truth of the statement?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are the damages you award *[name of plaintiff]* for the assumed harm to *[his/her]* reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.  
\$ \_\_\_\_\_

Regardless of your answer to question 9, skip question 10 and answer question 11.

#### PUNITIVE DAMAGES

10. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of defendant]* knew the statement was false or had serious doubts about the truth of the statement?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

\_\_\_ Yes \_\_\_ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

12. What amount, if any, do you award as punitive damages against [name of defendant]?

\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 1702, Defamation per se—Essential Factual Elements (Private Figure-Matter of Public Concern).*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1702, Defamation per se—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame, mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 12 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-1703. Defamation per quod (Private Figure—Matter of Public Concern)

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We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the statement false?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Is the statement, because of facts known to the people who heard or read the statement, the kind of statement that would tend to injure [name of plaintiff] in [his/her] occupation?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] suffer Harm to [his/her] property, business, profession, or

occupation [including money spent as a result of the statement]?

Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the statement a substantial factor in causing [name of plaintiff]'s harm?

Yes  No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

### ACTUAL DAMAGES

8. What are [name of plaintiff]'s actual damages?

[\$\_\_\_\_\_]

If [name of plaintiff] has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 9.

### PUNITIVE DAMAGES

9. Did [name of plaintiff] prove by clear and convincing evidence that [name of defendant] knew the statement was false or had serious doubts about the truth of the statement?

Yes  No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

Yes  No

If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

11. What amount, if any, do you award as punitive damages against [name of defendant]?

\$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2005, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 8 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 5 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1703, *Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 11 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.*

**VF-1704. Defamation per se—Affirmative Defense—Truth (Private Figure—Matter of Private Concern)**

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We answer the questions submitted to us as follows:

1. **Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per se defamatory statement.]**  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?**  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Did [this person/these people] reasonably understand the statement to mean that [insert ground(s) for defamation per se, e.g., “[name of plaintiff] had committed a crime”]?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Was the statement substantially true?**  
 Yes  No

**If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

**ACTUAL DAMAGES**

6. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff] actual harm?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip question 7 and answer question 8.

7. What are [name of plaintiff]'s actual damages for:
- |   |           |
|---|-----------|
| [a. Harm to [name of plaintiff]'s property, business, trade, profession, or occupation? | \$ _____] |
| [b. Expenses [name of plaintiff] had to pay as a result of the defamatory statements?   | \$ _____] |
| [c. Harm to [name of plaintiff]'s reputation?   | \$ _____] |
| [d. Shame, mortification, or hurt feelings?   | \$ _____] |

TOTAL \$ \_\_\_\_\_

[If [name of plaintiff] has not proved any actual damages for either c or d, then answer question 8. If [name of plaintiff] has proved actual damages for both c and d, skip question 8 and answer question 9.]

**ASSUMED DAMAGES**

8. What are the damages you award [name of plaintiff] for the assumed harm to [his/her] reputation and for shame, mortification, or hurt feelings? You must award at least a nominal sum.  
\$ \_\_\_\_\_

Regardless of your answer to question 8, answer question 9.

**PUNITIVE DAMAGES**

9. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What amount, if any, do you award as punitive damages against [name of defendant]?  
\$ \_\_\_\_\_



Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2005, April 2008, October 2008, December 2010, December 2016*

### **Directions for Use**

~~This verdict form is based on CACI No. 1704, *Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)*, and CACI No. 1720, *Affirmative Defense—Truth*. Delete question 4 if the affirmative defense of the truth is not at issue.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 1704, *Defamation per se—Essential Factual Elements (Private Figure—Matter of Private Concern)*, and CACI No. 1720, *Affirmative Defense—Truth*. Delete question 4 if the affirmative defense of the truth is not at issue.~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

Give the jury question 3 only if the statement is not defamatory on its face.

In question 7, omit damage items c and d if the plaintiff elects not to present proof of actual damages for harm to reputation and for shame, mortification, or hurt feelings. Whether or not proof for both categories is offered, include question 8. For these categories, the jury may find that no actual damages have been proven but must still make an award of assumed damages.

Additional questions on the issue of punitive damages may be needed if the defendant is a corporate or other entity.

Omit question 10 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-1705. Defamation per quod (Private Figure—Matter of Private Concern)**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] make the following statement to [a person/persons] other than [name of plaintiff]? [Insert claimed per quod defamatory statement.]  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the [person/people] to whom the statement was made reasonably understand that the statement was about [name of plaintiff]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of defendant] fail to use reasonable care to determine the truth or falsity of the statement?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did the statement tend to injure [name of plaintiff] in [his/her] occupation?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [name of plaintiff] suffer Harm to [his/her] property, business, profession, or occupation [including money spent as a result of the statement]?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the statement a substantial factor in causing [name of plaintiff]'s harm?  
 Yes  No

If your answer to question 6 is yes, then answer questions 7 and 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

**ACTUAL DAMAGES**

7. What are [name of plaintiff]'s actual damages?

[a. Past economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] had to pay as a result of the defamatory statements

\$ \_\_\_\_\_ ]

[b. Future economic loss, including harm to [name of plaintiff]'s property, business, trade, profession, or occupation, and expenses [name of plaintiff] will have to pay as a result of the defamatory statements

\$ \_\_\_\_\_ ]

[c. Past noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss including shame, mortification, or hurt feelings, and harm to [name of plaintiff]'s reputation

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

If [name of plaintiff] has not proved any actual damages, stop here, answer no further questions, and have the presiding juror sign and date this form. If you awarded actual damages, answer question 8.

**PUNITIVE DAMAGES**

8. Has [name of plaintiff] proved by clear and convincing evidence that [name of defendant] acted with malice, oppression, or fraud?

\_\_\_\_\_ Yes \_\_\_\_\_ No

**If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

9. What amount, if any, do you award as punitive damages against [*name of defendant*]?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2005, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1703, Defamation per quod—Essential Factual Elements (Private Figure-Matter of Public Concern).*~~

Multiple statements may need to be set out separately, and if separate damages are claimed as to each statement, separate verdict forms may be needed for each statement because all the elements may need to be found as to each statement.

Users may need to itemize all the damages listed in question 7 if, for example, there are multiple defendants and issues regarding apportionment of damages under Proposition 51.

Question 4 may be modified by referring to one of the other two grounds listed in element 3 of CACI No. 1705, *Defamation per quod—Essential Factual Elements (Private Figure-Matter of Private Concern)*, depending on which ground is applicable in the case.

Additional questions may be needed on the issue of punitive damages if the defendant is a corporate or other entity.

Omit question 9 if the issue of punitive damages has been bifurcated.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-1720. Slander of Title

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [make a statement/*[specify other act, e.g., record a deed]*] that cast doubts about *[name of plaintiff]*'s ownership of the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Was the statement made to a person other than *[name of plaintiff]*]*[Specify other publication, e.g., Did the deed become a public record]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* in fact own the property?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [know that/act with reckless disregard of the truth or falsity as to whether] *[name of plaintiff]* owned the property?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* know or should [he/she] have recognized that someone else might act in reliance on the [statement/*e.g., deed*], causing *[name of plaintiff]* financial loss?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* in fact suffer immediate and direct financial harm because someone else acted in reliance on the [statement/*e.g., deed*]?

\_\_\_ Yes \_\_\_ No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

7. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s harm?

\_\_\_ Yes \_\_\_ No

**If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

8. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$ \_\_\_\_\_]

[b. Future economic loss: \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

New December 2015; Revised December 2016

**Directions for Use**

This verdict form is based on CACI No. 1730, *Slander of Title—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Slander of title may be either by words or an act that clouds title to the property. (See, e.g., *Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 661 [132 Cal.Rptr.3d 781] [filing of lis pendens].) If the slander is by words, select the first option in question 2. If the slander is by means other than words, specify the means in question 1 and how it became known to others in question 2.



If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1721. Trade Libel

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make a statement that [would be clearly or necessarily understood to have] disparaged the quality of [*name of plaintiff*]'s [*product/service*]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the statement made to a person other than [*name of plaintiff*]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the statement untrue?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] [know that the statement was untrue/act with reckless disregard of the truth or falsity of the statement]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] know or should [he/she] have recognized that someone else might act in reliance on the statement, causing [*name of plaintiff*] financial loss?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of plaintiff*] suffer direct financial harm because someone else acted in reliance on the statement?  
 Yes  No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

7. Was [name of defendant]’s conduct a substantial factor in causing [name of plaintiff]’s harm?  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

8. What are [name of plaintiff]’s damages?

[a. Past economic loss \$ \_\_\_\_\_]

[b. Future economic loss \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New December 2015; Revised December 2016*

### Directions for Use

This verdict form is based on CACI No. 1731, *Trade Libel—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1800. Privacy—Intrusion Into Private Affairs**

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**We answer the questions submitted to us as follows:**

1. **Did [name of plaintiff] have a reasonable expectation of privacy in [specify place or other circumstance]?**  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did [name of defendant] intentionally intrude in [specify place, or other circumstance]?**  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Would [name of defendant]’s intrusion be highly offensive to a reasonable person?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?**  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **What are [name of plaintiff]’s damages?**

**[a. Past economic loss**

[lost earnings                   \$ \_\_\_\_\_]  
[lost profits                     \$ \_\_\_\_\_]  
[medical expenses             \$ \_\_\_\_\_]  
[other past economic loss     \$ \_\_\_\_\_]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

**[b. Future economic loss**

[lost earnings                   \$ \_\_\_\_\_]

[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1800, ~~Intrusion Into Private Affairs.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1800, ~~Intrusion Into Private Affairs.~~*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1801. Privacy—Public Disclosure of Private Facts**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* publicize private information concerning *[name of plaintiff]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Would a reasonable person in *[name of plaintiff]*'s position consider the publicity highly offensive?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know or act with reckless disregard of the fact that a reasonable person in *[name of plaintiff]*'s position would consider the publicity highly offensive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the private information of legitimate public concern [or did it have a substantial connection to a matter of legitimate public concern]?  
 Yes  No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?



[a. Past economic loss  
    [lost earnings \$ \_\_\_\_\_]  
    [lost profits \$ \_\_\_\_\_]  
    [medical expenses \$ \_\_\_\_\_]  
    [other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
    [lost earnings \$ \_\_\_\_\_]  
    [lost profits \$ \_\_\_\_\_]  
    [medical expenses \$ \_\_\_\_\_]  
    [other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1801, Public Disclosure of Private Facts.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 1801, *Public Disclosure of Private Facts*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1802. Privacy—False Light

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* publicize information or material that showed *[name of plaintiff]* in a false light?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Would a reasonable person in *[name of plaintiff]*'s position consider the false light created by the publication to be highly offensive?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Is there clear and convincing evidence that *[name of defendant]* either knew the publication would create a false impression about *[name of plaintiff]* or acted with reckless disregard for the truth?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
 [lost earnings \$ \_\_\_\_\_]  
 [lost profits \$ \_\_\_\_\_]  
 [medical expenses \$ \_\_\_\_\_]  
 [other future economic loss \$ \_\_\_\_\_]  
 Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
 \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
 \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
 Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1802, False Light.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1802, False Light.*~~

If the conduct does not involve a matter of public concern, then substitute the following for question number 3: “Was [name of defendant] negligent in determining the truth of the information or whether a false impression would be created by its publication?” If the conduct involved material that is not defamatory on its face, the following question should be added to this form: “Did [name of plaintiff]

sustain harm to [his/her] property, business, profession, or occupation [including money spent as a result of the statements(s)]?”

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1803. Privacy—Appropriation of Name or Likeness**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] use [name of plaintiff]'s name, likeness, or identity without [name of plaintiff]'s permission?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] gain a commercial benefit [or some other advantage] by using [name of plaintiff]'s name, likeness, or identity?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 1803, Appropriation of Name or Likeness.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1803, Appropriation of Name or Likeness.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

**VF-1804. Privacy—Use of Name or Likeness (Civ. Code, § 3344)**

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**We answer the questions submitted to us as follows:**

1. **Did [name of defendant] knowingly use [name of plaintiff]’s [name/voice/signature/photograph/likeness] on merchandise or to advertise or sell products or services?**  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did [name of defendant] have [name of plaintiff]’s consent?**  
 Yes  No

**If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Was [name of defendant]’s use of [name of plaintiff]’s [name/voice/signature/photograph/likeness] directly connected to [name of defendant]’s commercial purpose?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]’s?**  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

- [5. **Did [name of plaintiff] suffer any actual damages or is [name of plaintiff] reasonably likely to suffer any actual damages in the future?**  
 Yes  No

**If your answer to question 5 is yes, then answer questions 6 and 7. If you answered no, answer question 7.]**

6. **What are [name of plaintiff]’s actual damages?**



[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]

\$ \_\_\_\_\_]

**TOTAL ACTUAL DAMAGES \$ \_\_\_\_\_**

[7. Did [name of defendant] receive any profits from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness] that you did not include under [name of plaintiff]'s actual damages for lost profits in Question 6 above?

\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What amount of those profits did [name of defendant] receive from the use of [name of plaintiff]'s [name/voice/signature/photograph/likeness]?

**TOTAL PROFITS RECEIVED BY DEFENDANT \$ \_\_\_\_\_]**

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2008, December 2010, June 2012, December 2012, December 2016*

### Directions for Use

This verdict form is based on CACI No. 1804A, *Use of Name or Likeness*, and CACI No. 1821, *Damages for Use of Name or Likeness*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 1804A, *Use of Name or Likeness*, and CACI No. 1821, *Damages for Use of Name or Likeness*.~~

Under Civil Code section 3344(a), the plaintiff may recover actual damages or \$750, whichever is greater. The plaintiff may also recover any profits that the defendant received from the unauthorized use that were not taken into account in calculating actual damages. (*Orthopedic Systems Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 547 [135 Cal.Rptr.3d 200].) The advisory committee recommends calculating the defendant's profits to be disgorged separately from actual damages. Questions 5 through 8 take the jury through the recommended course. If no actual damages are sought, question 5 may be omitted and the jury instructed to enter \$750 as the total actual damages in question 6. If the jury awards actual damages of less than \$750, the court should raise the amount to \$750. If there is no claim to disgorge the defendant's wrongful profits, questions 7 and 8 may be omitted.

Additional questions may be necessary if the facts implicate Civil Code section 3344(d) (see Directions for Use under CACI No. 1804B, *Use of Name or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*).

If specificity is not required, users do not have to itemize all the actual damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make

| any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-1807. Privacy—Recording of Confidential Information (Pen. Code, §§ 632, 637.2)**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* intentionally *[eavesdrop on/record]* *[name of plaintiff]*'s conversation by using an electronic device?  
\_\_\_\_ 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]* have a reasonable expectation that the conversation was not being overheard or recorded?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* have the consent of all parties to the conversation to *[eavesdrop on/record]* it?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 1809, Recording of Confidential Information.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 1809, Recording of Confidential Information.*~~

Questions 4 and 5 do not have to be read if the plaintiff is seeking the statutory penalty only.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-1900. Intentional Misrepresentation

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a false representation to *[name of plaintiff]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know that the representation was false, or did *[he/she]* make the representation recklessly and without regard for its truth?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intend that *[name of plaintiff]* rely on the representation?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* reasonably rely on the representation?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s representation a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]

[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
	<b>Total Past Economic Damages: \$ _____]</b>	

<b>[b. Future economic loss</b>	
[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
	<b>Total Future Economic Damages: \$ _____]</b>

<b>[c. Past noneconomic loss, including [physical pain/mental suffering:]</b>	
	\$ _____]

<b>[d. Future noneconomic loss, including [physical pain/mental suffering:]</b>	
	\$ _____]

**TOTAL \$ \_\_\_\_\_]**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2009, December 2010, June 2014, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1900, *Intentional Misrepresentation*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form.



However, if both intentional misrepresentation and negligent misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1903, *Negligent Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 2 above cannot be answered “yes” and question 3 of VF-1903 cannot also be answered “no.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made recklessly and without regard for the truth (see question 2 above) and one made without reasonable grounds for believing it is true (see CACI No. VF-1903, question 3). Question 2 of VF-1903 should be included to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-1901. Concealment

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We answer the questions submitted to us as follows:

1. Did [name of defendant] intentionally fail to disclose [a] fact[s] that [name of plaintiff] did not know and could not reasonably have discovered?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to deceive [name of plaintiff] by concealing the fact?  
\_\_\_ 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. Had the omitted information been disclosed, would [name of plaintiff] reasonably have behaved differently?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]'s concealment a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, June 2014, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1901, *Concealment*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Modify question 1 by referring to one of the other three grounds for concealment listed in element 1 of CACI No. 1901, *Concealment*, depending on which ground is applicable to the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-1902. False Promise

---

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a promise to *[name of plaintiff]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intend to perform this promise when *[he/she]* made it?  
 Yes  No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intend that *[name of plaintiff]* rely on this promise?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* reasonably rely on this promise?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* perform the promised act?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s promise a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this

form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, June 2014, December 2015, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 1902, *False Promise*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

If multiple promises are at issue, question 1 should be repeated to specify each one; for example: “1. Did [name of defendant] promise [name of plaintiff] that [specify promise]?” The rest of the questions will need to be repeated for each promise.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action (or from different promises), replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-1903. Negligent Misrepresentation

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make a false representation to *[name of plaintiff]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

- [2. Did *[name of defendant]* honestly believe that the representation was true when *[he/she]* made it?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.]

3. Did *[name of defendant]* have reasonable grounds for believing the representation was true when *[he/she]* made it?  
 Yes  No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* intend that *[name of plaintiff]* rely on the representation?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* reasonably rely on the representation?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]*'s reliance on *[name of defendant]*'s representation a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No



If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2009, December 2010, June 2014, December 2016

#### Directions for Use

This verdict form is based on CACI No. 1903, *Negligent Misrepresentation*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. However, if both negligent misrepresentation and intentional misrepresentation (see CACI No. 1903) are to be presented to the jury in the alternative, the preferred practice would seem to be that this verdict form and VF-1900, *Intentional Misrepresentation*, be kept separate and presented in the alternative. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

With respect to the same misrepresentation, question 3 above cannot be answered “no” and question 2 of VF-1900 cannot also be answered “yes.” The jury may continue to answer the next question from one form or the other, but not both.

If both intentional and negligent misrepresentation are before the jury, it is important to distinguish between a statement made without reasonable grounds for believing it is true (see question 3 above) and one made recklessly and without regard for the truth (see CACI No. VF-1900, question 2). Include question 2 to clarify that the difference is that for negligent misrepresentation, the defendant honestly believes that the statement is true. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2000. Trespass

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* **[own/lease/occupy/control]** the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* intentionally [enter/ [or] cause [another person/[insert name of thing]] to enter] *[name of plaintiff]*'s property?]**

*[or]*

**[Did *[name of defendant]*, although not intending to do so, [recklessly/ [or] negligently] [enter/ [or] cause [another person/[insert name of thing]] to enter] *[name of plaintiff]*'s property?]**

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* enter the property without *[name of plaintiff]*'s permission?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s **[entry/conduct]** a substantial factor in causing **[actual] harm to *[name of plaintiff]*?**  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]

[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
**Total Past Economic Damages: \$ \_\_\_\_\_]**

**[b. Future economic loss**  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
**Total Future Economic Damages: \$ \_\_\_\_\_]**

**[c. Past noneconomic loss, including [physical pain/mental suffering:]**  
**\$ \_\_\_\_\_]**

**[d. Future noneconomic loss, including [physical pain/mental suffering:]**  
**\$ \_\_\_\_\_]**

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised February 2005, April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not

have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 3 can be modified, as in element 3 in CACI No. 2000.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2001. Trespass—Affirmative Defense—Necessity

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intentionally [enter/ [or] cause [another person/*[insert name of thing]*] to enter] *[name of plaintiff]*'s property?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* enter the property without *[name of plaintiff]*'s permission?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was it necessary, or did it reasonably appear to *[name of defendant]* to be necessary, to enter the land to prevent serious harm to a person or property?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [entry/conduct] a substantial factor in causing [actual] harm to *[name of plaintiff]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]

[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

<b>[b. Future economic loss</b>	
[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

<b>[c. Past noneconomic loss, including [physical pain/mental suffering:]</b>	<b>\$ _____]</b>
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<b>[d. Future noneconomic loss, including [physical pain/mental suffering:]</b>	<b>\$ _____]</b>
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**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised February 2005, April 2007, October 2008, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2000, *Trespass—Essential Factual Elements*, and CACI No. 2005, *Affirmative Defense—Necessity*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 3 can be modified, as in element 3 in CACI No. 2000.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.



VF-2002. Trespass—Extrahazardous Activities

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* *[own/lease/occupy/control]* the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* engaged in *[insert extrahazardous activity]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[insert extrahazardous activity]* cause *[insert thing]* to enter *[name of plaintiff]*'s property?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* give permission for the entry?  
 Yes  No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss  
    [lost earnings                      \$ \_\_\_\_\_]  
    [lost profits                         \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2001, ~~Trespass—Extrahazardous Activities.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2001, ~~Trespass—Extrahazardous Activities.~~*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff’s consent, question 4 can be modified.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2003. Trespass to Timber (Civ. Code, § 3346)

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* intentionally enter *[name of plaintiff]*'s property and [cut down or damage trees/take timber] located on the property?]

[or]

[Did *[name of defendant]*, although not intending to do so, [recklessly/ [or] negligently] enter *[name of plaintiff]*'s property and damage trees located on the property?]

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* give permission to [cut down or damage the trees/take timber]?  
 Yes  No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*. The amount of actual damages found by the jury is to be doubled. (See Civ. Code, § 3346(a).) The court can do the computation based on the jury’s award.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of plaintiff's consent, question 3 can be modified, as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2004. Trespass to Timber—Willful and Malicious Conduct (Civ. Code, § 3346; Code Civ. Proc., § 733)**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* intentionally enter *[name of plaintiff]*'s property and [cut down or damage trees/take timber] located on the property?]  
[or]

[Did *[name of defendant]*, although not intending to do so, recklessly enter *[name of plaintiff]*'s property and damage trees located on the property?]

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* give permission to [cut down or damage the trees/take timber]?  
 Yes  No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* act willfully and maliciously?  
 Yes  No

Answer question 6.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2002, *Trespass to Timber—Essential Factual Elements*, and CACI No. 2003, *Damage to Timber—Willful and Malicious Conduct*.



The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there is an issue regarding whether the defendant exceeded the scope of the plaintiff's consent, question 3 can be modified as in element 3 in CACI No. 2002.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2005. Public Nuisance

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]*, by acting or failing to act, create a condition that was harmful to health?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did the condition affect a substantial number of people at the same time?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Would an ordinary person have been reasonably annoyed or disturbed by the condition?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did the seriousness of the harm outweigh the social utility of *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of plaintiff]* suffer harm that was different from the type of harm suffered by the general public?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2007, December 2010, December 2016*

### **Directions for Use**

*This form is based on CACI No. 2020, ~~Public Nuisance—Essential Factual Elements.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This form is based on CACI No. 2020, ~~Public Nuisance—Essential Factual Elements.~~*~~

Other factual situations may be substituted in question 1 as in element 1 of CACI No. 2020.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

Depending on the facts of the case, question 1 can be modified, as in element 1 of CACI No. 2020.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~*

VF-2006. Private Nuisance

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* [own/lease/occupy/control] the property?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*, by acting or failing to act, create a condition or permit a condition to exist that was harmful to health?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did this condition interfere with *[name of plaintiff]*'s use or enjoyment of *[his/her]* land?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* consent to *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would an ordinary person have been reasonably annoyed or disturbed by *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did the seriousness of the harm outweigh the public benefit of [*name of defendant*]'s conduct?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [*name of plaintiff*]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2007, December 2010, December 2011, December 2016*

### **Directions for Use**

*This form is based on CACI No. 2021, ~~Private Nuisance—Essential Factual Elements.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This form is based on CACI No. 2021, ~~Private Nuisance—Essential Factual Elements.~~*~~

Depending on the facts of the case, question 2 can be modified, as in element 2 of CACI No. 2021.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.*

VF-2100. Conversion

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* own/possess/have a right to possess a *[insert description of personal property]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* intentionally and substantially interfere with *[name of plaintiff]*'s property by *[[taking possession of/preventing [name of plaintiff] from having access to] the [insert description of personal property]]/[destroying the [insert description of personal property]/refusing to return [name of plaintiff]'s [insert description of personal property] after [name of plaintiff] demanded its return]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* consent?  
 Yes  No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* harmed?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?



TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New December 2005; Revised December 2009, December 2010, June 2011, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2100, ~~Conversion—Essential Factual Elements.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2100, Conversion—Essential Factual Elements.*~~

If the case involves multiple items of personal property as to which the evidence differs, users may need to modify question 2 to focus the jury on the different items.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

**VF-2200. Inducing Breach of Contract**

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We answer the questions submitted to us as follows:

1. Was there a contract between *[name of plaintiff]* and *[name of third party]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know of the contract?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intend to cause *[name of third party]* to breach the contract?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]*'s conduct cause *[name of third party]* to breach the contract?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss
- |                   |           |
|-------------------|-----------|
| [lost earnings    | \$ _____] |
| [lost profits     | \$ _____] |
| [medical expenses | \$ _____] |

[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2200, Inducing Breach of Contract.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2200, Inducing Breach of Contract.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2201. Intentional Interference With Contractual Relations**

---

We answer the questions submitted to us as follows:

1. Was there a contract between *[name of plaintiff]* and *[name of third party]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know of the contract?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]*'s conduct prevent performance or make performance more expensive or difficult?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [intend to disrupt the performance of this contract/ [or] know that disruption of performance was certain or substantially certain to occur]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]

[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
	<b>Total Past Economic Damages: \$ _____]</b>	

<b>[b. Future economic loss</b>		
[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
	<b>Total Future Economic Damages: \$ _____]</b>	

<b>[c. Past noneconomic loss, including [physical pain/mental suffering:]</b>		
		\$ _____]

<b>[d. Future noneconomic loss, including [physical pain/mental suffering:]</b>		
		\$ _____]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2201, *Intentional Interference With Contractual Relations—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2202. Intentional Interference With Prospective Economic Relations**

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We answer the questions submitted to us as follows:

1. **Did [name of plaintiff] and [name of third party] have an economic relationship that probably would have resulted in an economic benefit to [name of plaintiff]?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did [name of defendant] know of the relationship?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Did [name of defendant] engage in [specify conduct determined by the court to be wrongful if proved]?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **By engaging in this conduct, did [name of defendant] [intend to disrupt the relationship/ [or] know that disruption of the relationship was certain or substantially certain to occur]?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **Was the relationship disrupted?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**  
\_\_\_ Yes \_\_\_ No



If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, June 2013, December 2013, December 2016

### Directions for Use

This verdict form is based on CACI No. 2202, *Intentional Interference With Prospective Economic Relations—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2203. Negligent Interference With Prospective Economic Relations**

---

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] and [*name of third party*] have an economic relationship that probably would have resulted in an economic benefit to [*name of plaintiff*]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] know or should [he/she/it] have known of the relationship?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know or should [he/she/it] have known that this relationship would be disrupted if [he/she/it] failed to act with reasonable care?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] fail to act with reasonable care?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of defendant*] engage in wrongful conduct through [*insert grounds for wrongfulness*]?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was the relationship disrupted?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s wrongful conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2204, *Negligent Interference With Prospective Economic Relations*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2204, *Negligent Interference With Prospective Economic Relations*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2301. Breach of the Implied Obligation of Good Faith and Fair Dealing—Failure or Delay in Payment**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* suffer a loss covered under an insurance policy with *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* notified of the loss?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* [fail to pay/delay payment of] policy benefits?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s [failure to pay/delay in payment of] policy benefits unreasonable or without proper cause?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [failure to pay/delay in payment of] policy benefits a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2004, April 2007, December 2007, April 2008, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2331, *Breach of the Implied Obligation of Good Faith and Fair Dealing—Failure or Delay in Payment (First Party)—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2331, *Breach of the Implied Obligation of Good Faith and Fair Dealing – Failure or Delay in Payment (First Party) – Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If punitive damages are claimed, combine this form with the appropriate verdict form numbering from VF-3900 to VF-3904.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-2303. Bad Faith (First Party)—Breach of Duty to Inform Insured of Rights**

---

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* suffer a loss covered under an insurance policy with *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* [deny coverage for/refuse to pay] *[name of plaintiff]*'s loss?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* have the [right/obligation] to *[describe right or obligation at issue; e.g., "to request arbitration within 180 days"]* under the policy?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* fail to reasonably inform *[name of plaintiff]* of [his/her] [right/obligation] to *[describe right or obligation]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s failure to reasonably inform *[name of plaintiff]* a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. **Past economic loss**
- |                           |           |
|---------------------------|-----------|
| [lost earnings            | \$ _____] |
| [lost profits             | \$ _____] |
| [medical expenses         | \$ _____] |
| [other past economic loss | \$ _____] |
- Total Past Economic Damages: \$ \_\_\_\_\_ ]
- [b. **Future economic loss**
- |                             |           |
|-----------------------------|-----------|
| [lost earnings              | \$ _____] |
| [lost profits               | \$ _____] |
| [medical expenses           | \$ _____] |
| [other future economic loss | \$ _____] |
- Total Future Economic Damages: \$ \_\_\_\_\_ ]
- [c. **Past noneconomic loss, including [physical pain/mental suffering:]**
- \$ \_\_\_\_\_ ]
- [d. **Future noneconomic loss, including [physical pain/mental suffering:]**
- \$ \_\_\_\_\_ ]
- TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

---

*New September 2003; Revised April 2007, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 2333, *Bad Faith (First Party)—Breach of Duty to Inform Insured of Rights—Essential Factual Elements.**

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 2333, *Bad Faith (First Party) — Breach of Duty to Inform Insured of Rights — Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2404. Employment—Breach of the Implied Covenant of Good Faith and Fair Dealing**

---

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into an employment relationship?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* substantially perform *[his/her]* job duties?  
 Yes  No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was *[name of plaintiff]*'s performance excused or prevented?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* *[specify conduct that plaintiff claims prevented him/her from receiving the benefits that he/she was entitled to have received under the contract]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* fail to act fairly and in good faith?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of plaintiff]* harmed by *[name of defendant]*'s failure to act fairly and in good faith?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this

form.

7. What are [name of plaintiff]’s damages?

[a. Past economic loss: \$ \_\_\_\_\_ ]

[b. Future economic loss: \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 2423, Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2423, Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements.~~

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 7 is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2405. Breach of the Implied Covenant of Good Faith and Fair Dealing—Affirmative Defense—  
Good Faith Mistaken Belief**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* and *[name of defendant]* enter into an employment agreement?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* substantially perform *[his/her]* job duties?  
 Yes  No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was *[name of plaintiff]*'s performance excused or prevented?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* *[specify conduct that plaintiff claims prevented him/her from receiving the benefits that he/she was entitled to have received under the contract]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct based on an honest belief that *[insert alleged mistake]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. If true, would *[insert alleged mistake]* have been a legitimate and reasonable business purpose for the conduct?  
 Yes  No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of defendant] fail to act fairly and in good faith?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of plaintiff] harmed by [name of defendant]'s failure to act in good faith?  
\_\_\_ Yes \_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss: \$ \_\_\_\_\_ ]

[b. Future economic loss: \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*, and CACI No. 2424, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Good Faith Mistaken Belief Defense*.



The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2423, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements*, and CACI No. 2424, *Breach of the Implied Covenant of Good Faith and Fair Dealing—Good Faith Mistaken Belief Defense*.~~

Questions 2 and 3 should be deleted if substantial performance is not at issue.

The breakdown of damages in question 9 is optional; depending on the circumstances, users may wish to break down the damages even further.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2406. Wrongful Discharge in Violation of Public Policy

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* discharged?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]*'s *[insert alleged activity protected by public policy, e.g., "refusal to engage in price fixing"]* a substantial motivating reason for *[name of defendant]*'s decision to discharge *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did the discharge cause *[name of plaintiff]* harm?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2430, *Wrongful Discharge in Violation of Public Policy—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2407. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* require *[name of plaintiff]* to *[specify alleged conduct in violation of public policy, e.g., “engage in price fixing”]* as a condition of employment?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was this requirement so intolerable that a reasonable person in *[name of plaintiff]*'s position would have had no reasonable alternative except to resign?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff]* resign because of this requirement?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the requirement a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
	<b>Total Past Economic Damages: \$ _____]</b>	

[b. Future economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
	<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2431, Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2431, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Violate Public Policy*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2408. Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* employed by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* subjected to working conditions that violated public policy, in that *[describe conditions imposed on the employee that constitute the violation, e.g., "plaintiff was treated intolerably in retaliation for filing a workers' compensation claim"]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intentionally create or knowingly permit these working conditions?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Were these working conditions so intolerable that a reasonable person in *[name of plaintiff]*'s position would have had no reasonable alternative except to resign?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* resign because of these working conditions?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.



6. Were the working conditions a substantial factor in causing harm to [*name of plaintiff*]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2432, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2500. Disparate Treatment (Gov. Code, § 12940(a))

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* *[discharge/refuse to hire/[other adverse employment action]]* *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[protected status]* a substantial motivating reason for *[name of defendant]*'s *[discharge/refusal to hire/[other adverse employment action]]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s *[discharge/refusal to hire/[other adverse employment action]]* a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2500, *Disparate Treatment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2501. Disparate Treatment—Affirmative Defense—Bona fide Occupational Qualification  
(Gov. Code, § 12940(a))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of defendant]* *[discharge/refuse to hire/[other adverse employment action]]* *[name of plaintiff]*?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Was *[name of plaintiff]*'s *[protected status]* a substantial motivating reason for *[name of defendant]*'s *[discharge/refusal to hire/[other adverse employment action]]*?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was the job requirement regarding *[protected status]* reasonably necessary for the operation of *[name of defendant]*'s business?  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.**

6. Did *[name of defendant]* have a reasonable basis for believing that substantially all *[members of protected group]* are unable to safely and efficiently perform that job?

Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip questions 7 and 8, and answer question 9.

7. Was it impossible or highly impractical for [name of defendant] to consider whether each [applicant/employee] was able to safely and efficiently perform the job?  
 Yes  No

If your answer to question 7 is yes, then answer question 8. If you answered no, skip question 8 and answer question 9.

8. Was it impossible or highly impractical for [name of defendant] to rearrange job responsibilities to avoid using [protected status] as a job requirement?  
 Yes  No

If your answer to question 8 is no, then answer question 9. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. Was [name of defendant]'s [discharge/refusal to hire/[other adverse employment action]] a substantial factor in causing harm to [name of plaintiff]?  
 Yes  No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
Total Future Economic Damages: \$ _____]	

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
**Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

#### Directions for Use

This verdict form is based on CACI No. 2500, *Disparate Treatment—Essential Factual Elements*, and CACI No. 2501, *Affirmative Defense—Bona fide Occupational Qualification*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 10 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give



CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2502. Disparate Impact (Gov. Code, § 12940(a))

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* have *[an employment practice of [describe practice]/a selection policy of [describe policy]]* that had a disproportionate adverse effect on *[describe protected group-for example, persons over the age of 40]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Is *[name of plaintiff]* *[protected status]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s *[employment practice/selection policy]* a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
		<b>Total Past Economic Damages: \$ _____]</b>

[b. Future economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
		<b>Total Future Economic Damages: \$ _____]</b>

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2502, ~~Disparate Impact—Essential Factual.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual.*~~

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2502.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2503. Disparate Impact (Gov. Code, § 12940(a))—Affirmative Defense—Business Necessity/Job Relatedness—Rebuttal to Business Necessity/Job Relatedness Defense**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of defendant]* have *[an employment practice of [describe practice]/a selection policy of [describe policy]]* that had a disproportionate adverse effect on *[describe protected group—for example, persons over the age of 40]*?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Is *[name of plaintiff]* *[protected status]*?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was the purpose of the *[employment practice/selection policy]* to operate the business safely and efficiently?  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, skip questions 6, 7, and 8, and answer question 9.**

6. Did the *[employment practice/selection policy]* substantially accomplish this business purpose?

Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, skip questions 7 and 8, and answer question 9.

7. Was there an alternative [employment practice/selection policy] that would have accomplished the business purpose equally well?

Yes  No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Would this alternative [employment practice/selection policy] have had less adverse impact on [describe members of protected group-for example, persons over the age of 40]?

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. Was [name of defendant]'s [employment practice/selection policy] a substantial factor in causing harm to [name of plaintiff]?

Yes  No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

#### Directions for Use

*This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual Elements, CACI No. 2503, Affirmative Defense—Business Necessity/Job Relatedness, and CACI No. 2504, Disparate Impact—Rebuttal to Business Necessity/Job Relatedness Defense.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2502, Disparate Impact—Essential Factual Elements, CACI No. 2503, Affirmative Defense—Business Necessity/Job Relatedness, and CACI No. 2504, Disparate Impact—Rebuttal to Business Necessity/Job Relatedness Defense.*~~

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2502.

If specificity is not required, users do not have to itemize all the damages listed in question 10 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.



VF-2504. Retaliation (Gov. Code, § 12940(h))

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* *[describe protected activity]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **[Did *[name of defendant]* *[discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]*?**

[or]

**[Did *[name of defendant]* engage in conduct that, taken as a whole, materially and adversely affected the terms and conditions of *[name of plaintiff]*'s employment?]**

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Was *[name of plaintiff]*'s *[describe protected activity]* a substantial motivating reason for *[name of defendant]*'s *[decision to [discharge/demote/[specify other adverse employment action]]* *[name of plaintiff]/conduct*?**  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?**  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **What are *[name of plaintiff]*'s damages?**

[a. **Past economic loss**

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
	<b>Total Past Economic Damages: \$ _____]</b>	

[b. Future economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
	<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, August 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2505, *Retaliation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Read the second option for question 2 in cases involving a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. Give both options if the employee presents evidence supporting liability under both a sufficient-single-act theory or a pattern-of-harassment theory. Also select “conduct” in question 3 if the second option or both options are included for question 2.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2505. Quid pro quo Sexual Harassment

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* an employee of *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of alleged harasser]* make unwanted sexual advances to *[name of plaintiff]* or engage in other unwanted verbal or physical conduct of a sexual nature?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Were terms of employment, job benefits, or favorable working conditions made contingent on *[name of plaintiff]*'s acceptance of *[name of alleged harasser]*'s sexual advances or conduct?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. At the time of *[his/her]* conduct, was *[name of alleged harasser]* a supervisor or agent for *[name of defendant]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of alleged harasser]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2015, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2520, *Quid pro quo Sexual Harassment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question number 1, as in element 1 in CACI No. 2520.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2506A. Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Employer or Entity Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* subjected to unwanted harassing conduct because [he/she] was *[protected status, e.g., a woman]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* [or [his/her/its] supervisors or agents] know or should [he/she/it/they] have known of the harassing conduct?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did *[name of defendant]* [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?

\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the harassing conduct a substantial factor in causing harm to *[name of plaintiff]*?

\_\_\_ Yes \_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]



TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
**Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016*

### Directions for Use

This verdict form is based on CACI No. 2521A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521A. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

Modify question 2 if plaintiff was not actually a member of the protected class, but alleges harassment because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

**VF-2506B. Hostile Work Environment Harassment—Conduct Directed at Others—Employer or Entity Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* personally witness harassing conduct that took place in *[his/her]* immediate work environment?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive toward *[e.g., women]*?  
 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]* [or [his/her/its] supervisors or agents] know or should [he/she/it/they] have known of the harassing conduct?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did *[name of defendant]* [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the harassing conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016*

### Directions for Use

This verdict form is based on CACI No. 2521B, *Hostile Work Environment Harassment—Conduct Directed at Others--Essential Factual Elements—Employer or Entity Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521B. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

**VF-2506C. Hostile Work Environment Harassment—Widespread Sexual Favoritism--Employer or Entity Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there sexual favoritism in the work environment?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the sexual favoritism widespread, and also severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* [or [his/her/its] supervisors or agents] know or should [he/she/it/they] have known of the sexual favoritism?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [name of defendant] [or [his/her/its] supervisors or agents] fail to take immediate and appropriate corrective action?

\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the sexual favoritism a substantial factor in causing harm to [name of plaintiff]?

\_\_\_ Yes \_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
**Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism--Essential Factual Elements—Employer or Entity Defendant.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant.*~~

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~

**VF-2507A. Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was [*name of plaintiff*] [an employee of/a person providing services under a contract with] [*name of employer*]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [*name of plaintiff*] subjected to unwanted harassing conduct because [he/she] was [*protected status, e.g., a woman*]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] consider the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [*name of defendant*] [participate in/assist/ [or] encourage] the harassing conduct?  
 Yes  No



If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the harassing conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

**attendant] that you are ready to present your verdict in the courtroom.**

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*Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013,  
December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 2522A, *Hostile Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2522A.

Modify question 2 if plaintiff was not actually a member of the protected class, but alleges harassment because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.

**VF-2507B. Hostile Work Environment Harassment—Conduct Directed at Others—Individual Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of employer]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* personally witness harassing conduct that took place in *[his/her]* immediate work environment?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the harassment severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive toward *[e.g., women]*?  
 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]* [participate in/assist/ [or] encourage] the harassing conduct?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the harassing conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

## Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016*

### Directions for Use

This verdict form is based on CACI No. 2522B, *Hostile Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~

**VF-2507C. Hostile Work Environment Harassment—Widespread Sexual Favoritism--Individual Defendant (Gov. Code, § 12940(j))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* [an employee of/a person providing services under a contract with] *[name of employer]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was there sexual favoritism in the work environment?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the sexual favoritism widespread, and also severe or pervasive?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Would a reasonable *[describe member of protected group, e.g., woman]* in *[name of plaintiff]*'s circumstances have considered the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of plaintiff]* consider the work environment to be hostile or abusive?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* [participate in/assist/ [or] encourage] the sexual favoritism?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the sexual favoritism a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*Derived from former CACI No. VF-2507 December 2007; Revised December 2010, December 2014, December 2016*

### Directions for Use

This verdict form is based on CACI No. 2522C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Individual Defendant*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2522C, *Hostile Work Environment Harassment—Widespread Sexual Favoritism—Essential Factual Elements—Individual Defendant*.~~

Relationships other than employer/employee can be substituted in question 1, as in element 1 in CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.



**VF-2508. Disability Discrimination—Disparate Treatment**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of defendant]* **[know that *[name of plaintiff]* had/treat *[name of plaintiff]* as if *[he/she]* had] [a history of having] [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Was *[name of plaintiff]* **able to perform the essential job duties [with reasonable accommodation] for [his/her] *[e.g., physical condition]***?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Did *[name of defendant]* **[discharge/refuse to hire/*[other adverse employment action]*] *[name of plaintiff]***?  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Was *[name of plaintiff]*'s **[perceived] [history of [a]] *[e.g., physical condition]* a**

**substantial motivating reason for [name of defendant]'s decision to [discharge/refuse to hire/[other adverse employment action]] [name of plaintiff]?**

\_\_\_ Yes \_\_\_ No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

**7. Was [name of defendant]'s [decision/conduct] a substantial factor in causing harm to [name of plaintiff]?**

\_\_\_ Yes \_\_\_ No

**If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

**8. What are [name of plaintiff]'s damages?**

**[a. Past economic loss**

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

**[b. Future economic loss**

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

**[c. Past noneconomic loss, including [physical pain/mental suffering:]**

**\$ \_\_\_\_\_]**

**[d. Future noneconomic loss, including [physical pain/mental suffering:]**

**\$ \_\_\_\_\_]**

**TOTAL \$ \_\_\_\_\_**

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2007, December 2009, June 2010, December 2010, June 2013, December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 2540, *Disability Discrimination—Disparate Treatment—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2540. Depending on the facts of the case, other factual scenarios can be substituted in questions 3 and 6, as in elements 3 and 6 of the instruction.

For question 3, select the claimed basis of discrimination: an actual disability, a history of a disability, a perceived disability, or a perceived history of a disability. For an actual disability, select “know that [name of plaintiff] had.” For a perceived disability, select “treat [name of plaintiff] as if [he/she] had.”

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [insert major life activity]” in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2509. Disability Discrimination—Reasonable Accommodation (Gov. Code, § 12940(m))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did *[name of defendant]* **know of *[name of plaintiff]*'s *[e.g., physical condition]* [that limited *[insert major life activity]*]**?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for *[his/her]* *[e.g., physical condition]*?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Did *[name of defendant]* **fail to provide reasonable accommodation for *[name of plaintiff]*'s *[e.g., physical condition]*?**

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s failure to provide reasonable accommodation a substantial factor in causing harm to [name of plaintiff]?

\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements.*~~

Select a term to use throughout to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit "that limited [*insert major life activity*]" in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.*

**VF-2510. Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship (Gov. Code, § 12940(m))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
\_\_\_ Yes \_\_\_ No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
\_\_\_ Yes \_\_\_ No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?  
\_\_\_ Yes \_\_\_ No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did *[name of defendant]* **know of *[name of plaintiff]*'s *[e.g., physical condition]* [that limited *[insert major life activity]*]**?  
\_\_\_ Yes \_\_\_ No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was *[name of plaintiff]* **able to perform the essential job duties with reasonable accommodation for *[his/her]* *[e.g., physical condition]*?**  
\_\_\_ Yes \_\_\_ No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Did *[name of defendant]* **fail to provide reasonable accommodation for *[name of***



*plaintiff*]'s [e.g., *physical condition*]?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [*name of plaintiff*]'s proposed accommodations have created an undue hardship to the operation of [*name of defendant*]'s business?

\_\_\_ Yes \_\_\_ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [*name of defendant*]'s failure to provide a reasonable accommodation a substantial factor in causing harm to [*name of plaintiff*]?

\_\_\_ Yes \_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, April 2009, December 2009, December 2010, December 2016*

### Directions for Use

~~This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements, and CACI No. 2545, Disability Discrimination—Affirmative Defense—Undue Hardship. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2541, Disability Discrimination—Reasonable Accommodation—Essential Factual Elements, and CACI No. 2545, Disability Discrimination—Affirmative Defense—Undue Hardship. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

Select a term to use throughout to describe the source of the plaintiff’s limitations. It may be a statutory term such as “physical disability,” “mental disability,” or “medical condition.” (See Gov. Code, § 12940(a).) Or it may be a general term such as “condition,” “disease,” or “disorder.” Or it may be a specific health condition such as “diabetes.”

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2541.

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit “that limited [insert major life activity]” in questions 3 and 4. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (l) [no requirement that medical condition limit major life activity].)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2511. Religious Creed Discrimination—Failure to Accommodate (Gov. Code, § 12940(I))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Does *[name of plaintiff]* **have a sincerely held religious belief that *[describe religious belief, observance, or practice]*?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did *[name of plaintiff]*'s religious **[belief/observance]** conflict with a job requirement?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Did *[name of defendant]* **know of the conflict between *[name of plaintiff]*'s religious [belief/observance] and the job requirement?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Did *[name of defendant]* **reasonably accommodate *[name of plaintiff]*'s religious [belief/observance]?**  
 Yes  No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of plaintiff]'s failure to comply with the conflicting job requirement a substantial motivating reason for [name of defendant]'s [discharge of/refusal to hire/[other adverse employment action]] [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s failure to reasonably accommodate [name of plaintiff]'s religious [belief/observance] a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, June 2013, December 2016

### Directions for Use

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2512. Religious Creed Discrimination—Failure to Accommodate—Affirmative Defense—  
Undue Hardship (Gov. Code, §§ 12926(u), 12940(l))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Does *[name of plaintiff]* **have a sincerely held religious belief that *[describe religious belief, observance, or practice]*?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did *[name of plaintiff]*'s religious **[belief/observance] conflict with a job requirement?**  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Did *[name of defendant]* **know of the conflict between *[name of plaintiff]*'s religious [belief/observance] and the job requirement?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Did *[name of defendant]* **reasonably accommodate *[name of plaintiff]*'s religious [belief/observance]?**

Yes  No

**If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.**

7. **Did [name of defendant] explore available ways to accommodate [name of plaintiff]’s religious [belief/observance]?**  
 Yes  No

**If your answer to question 7 is yes, then answer question 8. If you answered no, skip question 8 and answer question 9.**

8. **Could [name of defendant] have accommodated [name of plaintiff]’s religious [belief/observance] without causing undue hardship to [name of defendant]’s business?**  
 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. **Was [name of plaintiff]’s failure to comply with the conflicting job requirement a substantial motivating reason for [name of defendant]’s [discharge of/refusal to hire/[other adverse employment action]] [name of plaintiff]?**  
 Yes  No

**If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

10. **Was [name of defendant]’s failure to reasonably accommodate [name of plaintiff]’s religious [belief/observance] a substantial factor in causing harm to [name of plaintiff]?**  
 Yes  No

**If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

11. **What are [name of plaintiff]’s damages?**

[a. **Past economic loss**  
[lost earnings] \$ \_\_\_\_\_  
[lost profits] \$ \_\_\_\_\_  
[medical expenses] \$ \_\_\_\_\_



[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2012, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements* (see Gov. Code, §§ 12926(u), 12940(l)) and CACI No. 2561, *Religious Creed Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 11 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2513. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n))**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* **[an employer/*[other covered entity]*]**?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Was *[name of plaintiff]* **[an employee of *[name of defendant]*/an applicant to *[name of defendant]* for a job/*[other covered relationship to defendant]*]**?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of plaintiff]* **have [a] *[select term to describe basis of limitations, e.g., physical condition]* [that limited *[insert major life activity]*]**?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did *[name of plaintiff]* **request that *[name of defendant]* make reasonable accommodation for *[his/her]* *[e.g., physical condition]* so that *[he/she]* would be able to perform the essential job requirements?**  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was *[name of plaintiff]* **willing to participate in an interactive process to determine whether reasonable accommodation could be made so that *[he/she]* would be able to perform the essential job requirements?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Did [name of defendant] fail to participate in a timely, good-faith interactive process with [name of plaintiff] to determine whether reasonable accommodation could be made?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s failure to participate in a good-faith interactive process a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_]

Signed: \_\_\_\_\_

## Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New April 2009; Revised December 2009, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process.*~~

Select a term to use throughout to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit "that limited [*insert major life activity*]" in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Do not include the transitional language following question 7 and question 8 if the only damages claimed are also claimed under Government Code section 12940(m) on reasonable accommodation. Use CACI No. VF-2509, *Disability Discrimination—Reasonable Accommodation*, or CACI No. VF-2510, *Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship*, to claim these damages.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to~~

~~award prejudgment interest on specific losses that occurred prior to judgment.~~

There is a split of authority as to whether the employee must also prove that reasonable accommodation was possible before there is a violation for failure to engage in the interactive process. (Compare *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1 [jury’s finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] with *Nadaf-Rahrov v. The Nieman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings a section 12940(n) claim bears the burden of proving that a reasonable accommodation was available before the employer can be held liable under the statute].)

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2514. Failure to Prevent Harassment, Discrimination, or Retaliation**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] fail to take all reasonable steps to prevent the [harassment/discrimination/retaliation]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s failure to prevent the [harassment/discrimination/retaliation] a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s damages?

- [a. Past economic loss
- |                           |           |
|---------------------------|-----------|
| [lost earnings            | \$ _____] |
| [lost profits             | \$ _____] |
| [medical expenses         | \$ _____] |
| [other past economic loss | \$ _____] |
- Total Past Economic Damages: \$ \_\_\_\_\_]

- [b. Future economic loss
- |                             |           |
|-----------------------------|-----------|
| [lost earnings              | \$ _____] |
| [lost profits               | \$ _____] |
| [medical expenses           | \$ _____] |
| [other future economic loss | \$ _____] |
- Total Future Economic Damages: \$ \_\_\_\_\_]

- [c. Past noneconomic loss, including [physical pain/mental suffering:]
- \$ \_\_\_\_\_]

- [d. Future noneconomic loss, including [physical pain/mental suffering:]
- \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New June 2010; Revised December 2010, June 2013, December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 2527, *Failure to Prevent Harassment, Discrimination, or Retaliation—Essential Factual Elements—Employer or Entity Defendant*. These questions should be added to the verdict form that addresses the underlying claim of discrimination, retaliation, or harassment if the plaintiff also asserts a separate claim against the employer for failure to prevent the underlying conduct. The jury should not reach these questions unless it finds that the underlying claim is proved.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred before judgment.~~



VF-2515. Limitation on Remedies—Same Decision

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* an *[employer/[other covered entity]]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* *[an employee of [name of defendant]/an applicant to [name of defendant] for a job/[other covered relationship to defendant]]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* *[discharge/refuse to hire/[other adverse employment action]]* *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[protected status or activity]* a substantial motivating reason for *[name of defendant]*'s *[discharge of/refusal to hire/[other adverse employment action]]* *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[specify employer's stated legitimate reason, e.g., plaintiff's poor job performance]* also a substantial motivating reason for *[name of defendant]*'s *[discharge/refusal to hire/[other adverse employment action]]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Would *[name of defendant]* have *[discharged/refused to hire/[other adverse employment*

action]] [name of plaintiff] anyway at that time based on [e.g., plaintiff's poor job performance] had [name of defendant] not also been substantially motivated by [discrimination/retaliation]?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is no, then answer question 7. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s [discharge/refusal to hire/[other adverse employment action]] a substantial factor in causing harm to [name of plaintiff]?

\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

## Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New December 2013; Revised December 2015, December 2016

### Directions for Use

This verdict form is based on CACI No. 2512, *Limitation of Damages—Same Decision*. It incorporates questions from VF-2500, *Disparate Treatment*, and VF-2504, *Retaliation*, to guide the jury through the evaluation of the employer’s purported legitimate reason for the adverse employment action.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Question 5 asks the jury to determine whether the employer’s stated legitimate reason actually was a motivating reason for the adverse action. In this way, the jury evaluates the employer’s reason once. If it finds that it was an actual motivating reason, it then proceeds to question 6 to consider whether the employer has proved “same decision,” that is, that it would have taken the adverse employment action anyway for the legitimate reason, even though it may have also had a discriminatory or retaliatory motivation. If the jury answers “no” to question 5 it then proceeds to consider substantial-factor causation of harm and damages in questions 7 and 8.

Relationships other than employer/employee can be substituted in question 2, as in element 2 in CACI No. 2500.

Modify question 4 if plaintiff was not actually a member of the protected class, but alleges discrimination because he or she was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form

~~may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

VF-2600. Violation of CFRA Rights

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* [request/take] leave for the birth of [his/her] child or bonding with the child?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* provide reasonable notice to *[name of defendant]* of [his/her] need for [family care/medical] leave?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [refuse to grant *[name of plaintiff]*'s request for [family care/medical] leave] [refuse to return *[name of plaintiff]* to the same or a comparable job when [his/her] [family care/medical] leave ended] [*other violation of CFRA rights*]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s [decision/conduct] a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2600, Violation of CFRA Rights—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*.~~

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2601. Violation of CFRA Rights—Affirmative Defense—Employment Would Have Ceased**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* [request/take] leave for the birth of [his/her] child or bonding with the child?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* provide reasonable notice to *[name of defendant]* of [his/her] need for [family care/medical] leave?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* refuse to return *[name of plaintiff]* to the same or to a comparable job when [his/her] [family care/medical] leave ended?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Would *[name of defendant]* have [discharged/laid off] *[name of plaintiff]* if [he/she] had continued to work during the leave period?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s [decision/conduct] a substantial factor in causing harm to *[name of plaintiff]*?



\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*, and CACI No. 2612, *Affirmative Defense—Employment Would Have Ceased*. If a different affirmative defense is at issue, this form should be tailored accordingly.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2600, *Violation of CFRA Rights—Essential Factual Elements*, and CACI No. 2612, *Affirmative Defense—Employment Would Have Ceased*. If a different affirmative defense is at issue, this form should be tailored accordingly.~~

Other factual situations can be substituted in question 2 as in element 2 of CACI No. 2600.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

VF-2602. CFRA Rights Retaliation

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* eligible for family care or medical leave?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* *[[request/take] [family care/medical] leave/[other protected activity]]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* *[discharge/[other adverse employment action]]* *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]*'s *[[request for/taking] [family care/medical] leave/[other protected activity]]* a substantial motivating reason for *[name of defendant]*'s decision to *[discharge/[other adverse employment action]]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s retaliatory conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 2620, *CFRA Rights Retaliation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2700. Nonpayment of Wages (Lab. Code, §§ 201, 202, 218)**

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**We answer the questions submitted to us as follows:**

1. **Did [name of plaintiff] perform work for [name of defendant]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Does [name of defendant] owe [name of plaintiff] wages under the terms of the employment?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **What is the amount of unpaid wages? \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2005, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2700, Nonpayment of Wages—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2700, Nonpayment of Wages—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2701. Nonpayment of Minimum Wage (Lab. Code, § 1194)**

---

We answer the questions submitted to us as follows:

1. Did [name of plaintiff] perform work for [name of defendant]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of plaintiff] paid less than the minimum wage by [name of defendant] for some or all hours worked?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. How many hours was [name of plaintiff] paid less than the minimum wage?  
\_\_\_ hours

4. What is the amount of wages owed? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised June 2005, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2701, Nonpayment of Minimum Wage—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. ~~This verdict form is based on CACI No. 2701, Nonpayment of Minimum Wage—Essential Factual Elements.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If



different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2702. Nonpayment of Overtime Compensation (Lab. Code, § 1194)**

---

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* perform work for *[name of defendant]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* work overtime hours?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* know, or should *[name of defendant]* have known, that *[name of plaintiff]* had worked overtime hours?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* paid at a rate lower than the legal overtime compensation rate for any overtime hours that *[he/she]* worked for *[name of defendant]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What is the amount of wages owed? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After *[this verdict form has/all verdict forms have]* been signed, notify the *[clerk/bailiff/court attendant]* that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, June 2015, December 2016

### Directions for Use

This verdict form is based on CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2703. Waiting-Time Penalty for Nonpayment of Wages (Lab. Code, §§ 203, 218)**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* perform work for *[name of defendant]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* discharge *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* willfully fail to [pay/tender payment of] the full amount of wages earned by *[name of plaintiff]* on [his/her] last day of employment?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. For how many calendar days following *[name of plaintiff]*'s last day of employment did *[name of defendant]* willfully fail to [pay/tender payment of] the full amount of *[name of plaintiff]*'s wages? \_\_\_ days.

Answer question 5.

5. What was *[name of plaintiff]*'s daily wage rate at the time [his/her] employment ended? \$\_\_\_\_\_ per day.

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised June 2005, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2704, *Damages-Waiting—Time Penalty for Nonpayment of Wages*. Depending on the facts of the case, other factual scenarios can be substituted in questions 2, 3, and 4, as in elements 2, 3, and 4 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2704, *Damages-Waiting—Time Penalty for Nonpayment of Wages*. Depending on the facts of the case, other factual scenarios can be substituted in questions 2, 3, and 4, as in elements 2, 3, and 4 in the instruction.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-2704. Solicitation of Employee by Misrepresentation (Lab. Code, § 970)**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] make [a] representation(s) to [*name of plaintiff*] about the kind, character, or existence of work?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Was/Were] [*name of defendant*]'s representation(s) untrue?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] know the representation(s) [was/were] untrue when made?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of defendant*] intend that [*name of plaintiff*] rely on the representation(s)?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [*name of plaintiff*] reasonably rely on [*name of defendant*]'s representation(s) and move or change [his/her] residence for the purpose of working for [*name of defendant*]?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff*]'s reliance on [*name of defendant*]'s representation(s) a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 2710, *Solicitation of Employee by Misrepresentation—Essential Factual Elements*. Depending on the facts of the case, other factual scenarios can be substituted in question 1, as in element 1 in the instruction.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2710, *Solicitation of Employee by Misrepresentation—Essential Factual Elements*. Depending on the facts of the case, other factual scenarios can be substituted in question 1, as in element 1 in the instruction.~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.



**VF-2705. Preventing Subsequent Employment by Misrepresentation (Lab. Code, § 1050)**

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We answer the questions submitted to us as follows:

1. After [name of plaintiff]'s employment with [name of defendant] ended, did [name of defendant] make [a] representation(s) to [name of prospective employer] about [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Was/Were] [name of defendant]'s representation(s) untrue?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of defendant] know the representation(s) [was/were] untrue when [he/she/it] made [it/them]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [name of defendant] make the representation(s) with the intent of preventing [name of plaintiff] from obtaining employment?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2711, Preventing Subsequent Employment by Misrepresentation—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2711, *Preventing Subsequent Employment by Misrepresentation—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-2800. Employer's Willful Physical Assault (Lab. Code, § 3602(b)(1))**

---

We answer the questions submitted to us as follows:

1. Did [name of defendant] touch [name of plaintiff] in a harmful or offensive manner?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to harm [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2801, Employer’s Willful Physical Assault—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2801, Employer’s Willful Physical Assault—Essential Factual Elements.*~~

If the plaintiff alleges that defendant engaged in conduct other than that which is described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2801.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2801. Fraudulent Concealment of Injury (Lab. Code, § 3602(b)(2))

---

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* injured on the job?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know *[name of plaintiff/decedent]* had suffered a job-related injury?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* conceal this knowledge from *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff/decedent]*'s injury made worse as a result of this concealment?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s total damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____]
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[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Answer question 6.

6. What are the damages that [name of plaintiff/decendent] would have sustained if [name of defendant] had not concealed the injury?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]



[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Answer question 7.

7. Subtract the total amount in question 6 from the total amount in question 5. This is the amount [name of plaintiff] is entitled to recover.

\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 2802, Fraudulent Concealment of Injury—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2802, Fraudulent Concealment of Injury—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in questions 5 and 6, and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2802. Employer's Defective Product (Lab. Code, § 3602(b)(3))

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We answer the questions submitted to us as follows:

1. Was the *[product]* manufactured by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the *[product]* *[sold/leased/transferred for valuable consideration]* to an independent third person?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the third person then provide the *[product]* for *[name of plaintiff]*'s use?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the *[product]* defective in design or manufacture?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was the *[product]* a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

- [a. Past economic loss  
    [lost earnings                   \$ \_\_\_\_\_]  
    [lost profits                    \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:] \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2803, Employer's Defective Product—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2803, *Employer's Defective Product—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2803. Removal or Noninstallation of Power Press Guards (Lab. Code, § 4558)**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s *[employer/supervisor]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff]* injured while operating a power press?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* give an affirmative instruction to *[remove/not install]* the guards before *[name of plaintiff]*'s injury?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. When *[name of defendant]* did so, did *[he/she/it]* actually know that the lack of guards would create a probability of serious injury or death?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did the power press's *[designer/fabricator/assembler]* *[design the press with guards/install guards on the press/require guards be attached/specify that guards be attached]* and directly or indirectly convey this information to *[name of defendant]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s *[removal/failure to install]* the guards a substantial factor

in causing harm to [name of plaintiff]?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, December 2011, December 2016*

### **Directions for Use**

~~This verdict form is based on CACI No. 2804, *Removal or Noninstallation of Power Press Guards—Essential Factual Elements*.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 2804, *Removal or Noninstallation of Power Press Guards—Essential Factual Elements*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

~~If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.~~



**VF-2804. Co-Employee's Willful and Unprovoked Physical Act of Aggression (Lab. Code, § 3601(a)(1))**

---

We answer the questions submitted to us as follows:

1. Did *[name of defendant]* touch *[name of plaintiff]* in a harmful or offensive manner?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s conduct unprovoked?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* intend to harm *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003, Revised April 2007, December 2010, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 2811, Co-Employee's Willful and Unprovoked Physical Act of Aggression—Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2811, Co-Employee's Willful and Unprovoked Physical Act of Aggression—Factual Elements.*~~

If the plaintiff alleges that the defendant engaged in conduct other than that described in question 1, then the question may be modified by choosing one of the other options stated in element 1 of CACI No. 2811.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2805. Injury Caused by Co-Employee's Intoxication (Lab. Code, § 3601(a)(2))**

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We answer the questions submitted to us as follows:

1. Was [name of plaintiff] harmed?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant] intoxicated?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]'s intoxication a substantial factor in causing [name of plaintiff]'s harm?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 2812, Injury Caused by Co-Employee’s Intoxication—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 2812, Injury Caused by Co-Employee’s Intoxication—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-2900. FELA—Negligence—Plaintiff's Negligence at Issue

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*'s job duties further, or in any way substantially affect, interstate commerce?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her]* employment at the time of the incident?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]* negligent?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

7. Was *[name of plaintiff]* harmed?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was *[name of defendant]*'s negligence a cause of *[name of plaintiff/decedent]*'s [harm/death]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are *[name of plaintiff]*'s total damages? Do not reduce the damages based on the fault, if any, of *[name of plaintiff/decedent]*.

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]



TOTAL \$ \_\_\_\_\_

**If [name of plaintiff] has proved any damages, then answer question 10. If [name of plaintiff] has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.**

10. Was [name of plaintiff/decedent] negligent?  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 10 is yes, then answer question 11. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

11. Was [name of plaintiff/decedent]'s negligence a cause of [his/her] harm?  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

12. What percentage of responsibility for [name of plaintiff]'s harm do you assign to

[Name of defendant]: \_\_\_\_ %

[Name of plaintiff/decedent]: \_\_\_\_ %

**TOTAL: 100%**

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

This form is based on CACI No. 2900, *FELA—Essential Factual Elements*, and CACI No. 2904, *Comparative Fault*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This form is based on CACI No. 2900, *FELA—Essential Factual Elements*, and CACI No. 2904, *Comparative Fault*.~~

The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-2901. Federal Safety Appliance Act or Boiler Inspection Act**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* employed by *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* a common carrier by railroad?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* engaged in interstate commerce?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of plaintiff/decedent]*'s job duties further, or in any way substantially affect, interstate commerce?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff/decedent]* acting within the scope of *[his/her]* employment at the time of the incident?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* *[describe violation of Federal Safety Appliance Act/Boiler Inspection Act]*?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of plaintiff] harmed?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s conduct a cause of [[name of plaintiff]'s harm/[name of decedent]'s death]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

[d. Future loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

### **Directions for Use**

*This form is based on CACI No. 2920, Essential Factual Elements—Federal Safety Appliance Act or Boiler Inspection Act.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This form is based on CACI No. 2920, Essential Factual Elements—Federal Safety Appliance Act or Boiler Inspection Act.*~~

The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

**VF-3000. Violation of Federal Civil Rights—In General (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [intentionally/[other applicable state of mind]] [insert wrongful act]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] violate [name of plaintiff]'s right [insert right, e.g., "of privacy"] while acting or purporting to act in the performance of [his/her] official duties?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s [insert wrongful act] a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 3000, Violation of Federal Civil Rights—In General—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3000, Violation of Federal Civil Rights—In General—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give*

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-3001. Public Entity Liability (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did the *[name of local governmental entity]* have an official *[policy/custom]* *[specify policy or custom]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of local governmental entity]* know, or should it have been obvious to it, that this official *[policy/custom]* was likely to result in a deprivation of the right *[specify right violated]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of officer or employee]* an *[officer/employee/[other]]* of *[name of local governmental entity]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of officer or employee]* *[intentionally/[insert other applicable state of mind]]* *[insert conduct allegedly violating plaintiff's civil rights]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of officer or employee]*'s conduct violate *[name of plaintiff]*'s right *[specify right]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of officer or employee] act because of this official [policy/custom]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3005 December 2012; Revised December 2016

### Directions for Use

This verdict form is based on CACI No. 3001, *Local Government Liability—Policy or Custom—Essential Factual Elements*. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3002. Public Entity Liability—Failure to Train (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Was [name of local governmental entity]'s training program inadequate to train its [officers/employees] to properly handle usual and recurring situations?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of local governmental entity] know[, or should it have been obvious to it,] that the inadequate training program was likely to result in a deprivation of the right [specify right violated]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of officer or employee] violate [name of plaintiff]'s right [specify right]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the failure to provide adequate training the cause of the deprivation of [name of plaintiff]'s right [specify right]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. **Future economic loss**  
     [lost earnings                   \$ \_\_\_\_\_]  
     [lost profits                     \$ \_\_\_\_\_]  
     [medical expenses             \$ \_\_\_\_\_]  
     [other future economic loss \$ \_\_\_\_\_]  
   **Total Future Economic Damages: \$ \_\_\_\_\_]**

[c. **Past noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

[d. **Future noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                   **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, June 2011, December 2011; Renumbered from CACI No. VF-3006 December 2012; Revised December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3003, *Local Government Liability—Failure to Train—Essential Factual Elements*. It should be given with CACI No. VF-3000, *Violation of Federal Civil Rights—In General*, to impose liability on the governmental entity for the acts of its officer or employee.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3010. Excessive Use of Force—Unreasonable Arrest or Other Seizure (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* use excessive force in *[arresting/detaining]* *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s use of excessive force a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

**[c. Past noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**[d. Future noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3001 December 2012; Revised December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-3011. Unreasonable Search—Search With a Warrant (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* conduct an unreasonable search of *[name of plaintiff]*'s *[person/home/automobile/office/[insert other]]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s unreasonable search a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3002 December 2012; Revised December 2016*

#### Directions for Use

This verdict form is based on CACI No. 3022, *Unreasonable Search—Search With a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3012. Unreasonable Search—Search Without a Warrant (42 U.S.C. § 1983)**

---

We answer the questions submitted to us as follows:

1. Did [name of defendant] search [name of plaintiff]'s [person/home/automobile/office/[insert other]] without a warrant?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s search a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

**[c. Past noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**[d. Future noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3003 December 2012; Revised December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3023, *Unreasonable Search—Search Without a Warrant—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3013. Unreasonable Search—Search Without a Warrant—Affirmative Defense—Search Incident to Lawful Arrest (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* search *[name of plaintiff]*'s *[person/home/automobile/office/[insert other]]* without a warrant?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the search conducted as part of a lawful arrest of *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Did *[name of defendant]* search only *[name of plaintiff]* and the area within which *[name of plaintiff]* might have gained possession of a weapon or might have destroyed or hidden evidence?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was the search reasonable under the circumstances?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s search a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003, Revised April 2007, December 2010; Renumbered from CACI No. VF-3004*

December 2012; Revised December 2016

### Directions for Use

This verdict form is based on CACI No. 3023, *Unreasonable Search—Search Without a Warrant—Essential Factual Elements*, and CACI No. 3024, *Affirmative Defense—Search Incident to Lawful Arrest*. This form can be modified if another affirmative defense is at issue (see CACI No. 3025, *Affirmative Defense—Consent to Search*, and CACI No. 3026, *Affirmative Defense—Exigent Circumstances*).

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3020. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Excessive Force (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* use force against *[name of plaintiff]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the force excessive?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s use of excessive force a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss



[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

**[c. Past noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**[d. Future noneconomic loss, including [physical pain/mental suffering:]** \$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3007 December 2012; Revised December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3042, *Violation of Prisoner’s Federal Civil Rights—Eighth Amendment—Excessive Force*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3021. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm (42 U.S.C. § 1983)**

---

We answer the questions submitted to us as follows:

1. **While imprisoned, [describe violation that created risk of serious harm, e.g., was [name of plaintiff] placed in a cell block with rival gang members]?**  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did [name of defendant]'s conduct create a substantial risk of serious harm to [name of plaintiff]'s health or safety?**  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Did [name of defendant] know that [his/her] conduct created a substantial risk of serious harm to [name of plaintiff]'s health or safety?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Was there a reasonable justification for the conduct?**  
 Yes  No

**If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. **Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?**

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010, June 2011; Renumbered from CACI No. VF-3008 December 2012; Revised June 2015, December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 3040, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Substantial Risk of Serious Harm*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3022. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Medical Care (42 U.S.C. § 1983)**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a serious medical need?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know that *[name of plaintiff]* faced a substantial risk of serious harm if *[his/her]* medical need went untreated?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of defendant]* consciously disregard the risk by not taking reasonable steps to treat *[name of plaintiff]*'s medical need?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]* acting or purporting to act in the performance of *[his/her]* official duties?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s deliberate indifference a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages?

[a. **Past economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

**Total Past Economic Damages: \$ \_\_\_\_\_]**

[b. **Future economic loss**

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

**Total Future Economic Damages: \$ \_\_\_\_\_]**

[c. **Past noneconomic loss, including [physical pain/mental suffering:]**

**\$ \_\_\_\_\_]**

[d. **Future noneconomic loss, including [physical pain/mental suffering:]**

**\$ \_\_\_\_\_]**

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3009 December 2012; Revised June 2014, June 2015, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3041, *Violation of Prisoner’s Federal Civil Rights—Eighth Amendment—Medical Care*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-3023. Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities**

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We answer the questions submitted to us as follows:

1. While imprisoned, was [name of plaintiff] deprived of [describe deprivation, e.g., clothing]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was this deprivation sufficiently serious in that it denied [name of plaintiff] a minimal necessity of life?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [name of defendant]'s conduct create a substantial risk of serious harm to [name of plaintiff]'s health or safety?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [name of defendant] know that [his/her] conduct created a substantial risk of serious harm to [name of plaintiff]'s health or safety?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was there a reasonable justification for [name of defendant]'s conduct?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant] acting or purporting to act in the performance of [his/her] official duties?

\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New December 2015; Revised December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 3043, *Violation of Prisoner's Federal Civil Rights—Eighth Amendment—Deprivation of Necessities*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3032. Gender Price Discrimination (Civ. Code, § 51.6)

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We answer the questions submitted to us as follows:

1. Did [name of defendant] charge [name of plaintiff] more for services of similar or like kind because of [his/her] gender?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

**Answer question 4.**

4. What amount, if any, do you award as a penalty against [name of defendant]?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3012 December 2012; Revised June 2013, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3062, *Gender Price Discrimination—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

The award of a penalty in question 4 refers to the right of the jury to award a maximum of three times the amount of actual damages but not less than \$4,000. (See Civ. Code, § 52(a).) The judge should correct the verdict if the jury award goes over that amount. Also, if jury awards nothing or an amount less than \$4,000 in question 4 then the judge should increase that award to \$4,000 to reflect the statutory minimum.

It is possible that questions 2 and 3 may be omitted if only the statutory minimum \$4,000 award is sought. With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].)

If specificity is not required, users do not have to itemize all the damages listed in question 3 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3034. Sexual Harassment in Defined Relationship (Civ. Code, § 51.9)**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a business, service, or professional relationship with *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. [Did *[name of defendant]* make [sexual advances/sexual solicitations/sexual requests/demands for sexual compliance/*[insert other actionable conduct]*] to *[name of plaintiff]*?]

[or]

[Did *[name of defendant]* engage in [verbal/visual/physical] conduct of a [sexual nature/hostile nature based on gender]?]  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s conduct unwelcome and also pervasive or severe?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of plaintiff]* unable to easily end the relationship with *[name of defendant]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Has *[name of plaintiff]* suffered or will [he/she] suffer [economic loss or disadvantage/personal injury/the violation of a statutory or constitutional right] as a result of *[name of defendant]*'s conduct?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop

here, answer no further questions, and have the presiding juror sign and date this form.

6. What are [*name of plaintiff*]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[Answer question 7.

7. What amount do you award as punitive damages?

\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.



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New September 2003; Revised April 2007, April 2008, December 2010; Renumbered from CACI No. VF-3014 December 2012; Revised December 2016

### Directions for Use

This verdict form is based on CACI No. 3065, *Sexual Harassment in Defined Relationship—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Select either or both options for question 2 depending on the facts at issue.

If specificity is not required, users do not have to itemize all the damages listed in question 6 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances. For instructions on punitive damages, see instructions in the Damages series (CACI No. 3900 et seq.).

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3035. Bane Act (Civ. Code, § 52.1)

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* make threats of violence against *[[name of plaintiff]/ [or] [name of plaintiff]'s property]*?  
 Yes  No

*[or]*

1. Did *[name of defendant]* act violently against *[[name of plaintiff]/ [and] [name of plaintiff]'s property]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]'s* threats cause *[name of plaintiff]* to reasonably believe that if *[he/she]* exercised *[his/her]* right *[insert right, e.g., "to vote"]* *[name of defendant]* would commit violence against *[[him/her]/ [or] [his/her] property]* and that *[name of defendant]* had the apparent ability to carry out the threat?  
 Yes  No

*[or]*

2. Did *[name of defendant]* commit these acts of violence to *[prevent [name of plaintiff] from exercising [his/her] right [insert right, e.g., "to vote"]/retaliate against [name of plaintiff] for having exercised [his/her] right [insert right]]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]'s* conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]'s* damages?

[a. Past economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other past economic loss	\$ _____]	
	<b>Total Past Economic Damages:</b>	\$ _____]

[b. Future economic loss

[lost earnings	\$ _____]	
[lost profits	\$ _____]	
[medical expenses	\$ _____]	
[other future economic loss	\$ _____]	
	<b>Total Future Economic Damages:</b>	\$ _____]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

**TOTAL \$ \_\_\_\_\_**

[Answer question 5.

5. What amount do you award as punitive damages?

\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3015 and Revised December 2012, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3066, *Bane Act—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Give the first option for elements 1 and 2 if the defendant has threatened violence. Give the second option if the defendant actually committed violence.

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of \$4,000 for violations of Civil Code section 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither subsection of Section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the Bane Act refers to section 52. (See Civ. Code, § 52.1(b).) This reference would seem to indicate that damages may be recovered under both subsections (a) and (b) of section 52. The court should compute the damages under section 52(a) by multiplying actual damages by three, and awarding \$4,000 if the amount is less. Questions 5 addresses punitive damages under section 52(b).

If no actual damages are sought, the \$4,000 statutory minimum damages may be awarded without proof of harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) In this case, only questions 1 and 2 need be answered.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3100. Financial Abuse—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.30, 15657.5(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of employee defendant]* [take/hide/appropriate/obtain/ [or] retain] *[name of plaintiff/decedent]*'s property [for a wrongful use/with the intent to defraud/ [or] by undue influence]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
Total Past Economic Damages: \$ _____]	

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]

[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[5. Did [name of plaintiff] prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppression/ [or] fraud]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [name of decedent]’s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?  
\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.~~

If the plaintiff alleges that the defendant assisted in the wrongful conduct, modify question 1 as in element 2 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs are recoverable from the individual defendant without any additional showing of any kind. (Welf. & Inst. Code, § 15657.5(a).) Attorney fees are also recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the individual defendant acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4, include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3101. Financial Abuse—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.30, 15657.5(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s employee [take/hide/appropriate/obtain [or] retain] *[name of plaintiff/decedent]*'s property [for a wrongful use/ [or] with the intent to defraud [or] by undue influence]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]



Total Future Economic Damages: \$ \_\_\_\_\_ ]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_ ]

TOTAL \$ \_\_\_\_\_

[5. Did [name of plaintiff] prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppression/ [or] fraud]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?  
\$ \_\_\_\_\_ ]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

*New September 2003; Revised June 2005, April 2007, April 2008, October 2008, April 2009, December 2010, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent's Pain and Suffering*.

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 3100, *Financial Abuse—Essential Factual Elements*, and CACI No. 3101, *Financial Abuse—Decedent’s Pain and Suffering*.~~

If the plaintiff alleges that the defendant’s employees assisted in the wrongful conduct, modify question 1 as in element 1 of CACI No. 3100.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If the jury answers “yes” to questions 1, 2, and 3, attorney fees and costs will be recoverable from the employer, assuming that standard vicarious liability is shown. (See Welf. & Inst. Code, § 15657.5(c).) Incorporate questions 3 and 4 from CACI No. VF-3700, *Negligence—Vicarious Liability*, to address the liability of the employer for the acts of the employee.

Should the financial abuse in some way have caused the victim’s death, the decedent’s pain and suffering before death is recoverable on a showing by clear and convincing evidence that the employee acted with recklessness, oppression, fraud, or malice. (See Welf. & Inst. Code, § 15657.5(b); Code Civ. Proc., § 377.34.) In such a case, in question 4 include only item 4a for past economic loss. But also include questions 5 and 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3102. Neglect—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§  
15610.57, 15657; Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] while [he/she] was in *[name of employee defendant]*'s care or custody?  
 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 employee defendant]* have care or custody of *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of employee defendant]* fail to use that degree of care that a reasonable person in the same situation would have used in assisting in personal hygiene or in the provision of food, clothing, or shelter?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 4 is yes, then answer question[s] 5 [and] *[select 6, 7 or both]*. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[6. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of employer defendant] had advance knowledge of the unfitness of [name of employee defendant] and employed [him/her] with a knowing disregard of the rights or safety of others?  
 \_\_\_ Yes \_\_\_ No]

[7. Did [name of plaintiff] prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppression/ [or] fraud]?  
 \_\_\_ Yes \_\_\_ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?  
 \$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
 Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2008, October 2008, December 2010*

### **Directions for Use**

~~This verdict form is based on CACI No. 3103, *Neglect—Essential Factual Elements*, CACI No. 3104, *Neglect—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3103, *Neglect—Essential Factual Elements*, CACI No. 3104, *Neglect—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.~~

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

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Optional questions 6, 7, and 8 address enhanced remedies. If the neglect is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent's predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the neglect led to the elder's death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6 or 7 or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the

verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3103. Neglect—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.57, 15657; Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] while [he/she] was in *[name of defendant]*'s care or custody?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of plaintiff/decedent]* in *[name of defendant]*'s care or custody?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did one or more of *[name of defendant]*'s employees fail to use that degree of care that a reasonable person in the same situation would have used in assisting in personal hygiene or in the provision of food, clothing, or shelter?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 4 is yes, then answer question[s] 5 [and 6]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[6. Did *[name of plaintiff]* prove by clear and convincing evidence that an officer, a director, or a managing agent of *[name of defendant]* had advance knowledge of the unfitness of the employee and employed *[him/her]* with a knowing disregard of the rights or safety of others?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did *[name of plaintiff]* prove 1 through 4 above by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with *[recklessness/malice/oppression/ [or] fraud]*?  
\_\_\_\_ Yes \_\_\_\_ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were *[name of decedent]*'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?  
\$ \_\_\_\_\_]



Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3103, ~~Neglect—Essential Factual Elements~~, CACI No. 3104, ~~Neglect—Enhanced Remedies Sought~~, and CACI No. 3102B, ~~Employer Liability for Enhanced Remedies—Employer Defendant Only~~.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3103, Neglect—Essential Factual Elements, CACI No. 3104, Neglect—Enhanced Remedies Sought, and CACI No. 3102B, Employer Liability for Enhanced Remedies—Employer Defendant Only.*~~

Question 3 can be modified to correspond to the alleged wrongful conduct as in element 3 of CACI No. 3103.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the neglect led to the elder’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see*

*Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3104. Physical Abuse—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.63, 15657; Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was [*name of plaintiff/decedent*] [65 years of age or older/a dependent adult] at the time of the conduct?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of employee defendant*] physically abuse [*name of plaintiff/decedent*]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [*name of employee defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff/decedent*]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question 4 [and] [*select 5, 6, or both*]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [*name of plaintiff/decedent*]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[5. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of employer defendant] had advance knowledge of the unfitness of [name of employee defendant] and employed [him/her] with a knowing disregard of the rights or safety of others?  
\_\_\_\_ Yes \_\_\_\_ No]

[6. Did [name of plaintiff] prove 1 through 3 above by clear and convincing evidence and also prove by clear and convincing evidence that [name of employee defendant] acted with [recklessness/malice/oppression/ [or] fraud]?  
\_\_\_\_ Yes \_\_\_\_ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? \$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 5, 6, and 7 address enhanced remedies. If the physical abuse is proved by clear and convincing evidence, and it is also proved by clear and convincing evidence that the individual defendant acted with recklessness, malice, oppression, or fraud, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.) If any of these remedies are sought against the employer, include question 5. (See Welf. & Inst. Code, § 15657(c).) Question 5 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A

If any enhanced remedies are sought against either the individual or the employer, include question 6. If the physical abuse led to the neglected elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

In the transitional language after question 3, direct the jury to answer questions 5 or 6 or both, depending on which questions are to be included. If question 6 is to be included but question 5 is not, then 6 will be renumbered as 5.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3105. Physical Abuse—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.63, 15657;  
Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s employee physically abuse *[name of plaintiff/decedent]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question[s] 4 [and 5]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[5. Did [name of plaintiff] prove by clear and convincing evidence that an officer, a director, or a managing agent of [name of defendant] had advance knowledge of the unfitness of the employee and employed [him/her/them] with a knowing disregard of the rights or safety of others?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did [name of plaintiff] prove 1 through 3 by clear and convincing evidence and also prove by clear and convincing evidence that the employee acted with [recklessness/malice/oppresion/ [or] fraud]?  
\_\_\_\_ Yes \_\_\_\_ No]

[If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death? \$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3106, *Physical Abuse—Essential Factual Elements*, CACI No. 3107, *Physical Abuse—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.~~

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 5 and 6 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657; Code Civ. Proc., § 377.34.) Question 5 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the physical abuse led to the elder’s death, in question 4 include only item 4a for past economic loss. But also include the transitional language after question 6 and include question 7.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-3106. Abduction—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.06, 15657.05; Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of employee defendant]* [remove *[name of plaintiff/decedent]* from California and] restrain [him/her/*[name of plaintiff/decedent]*] from returning to California?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff/decedent]* lack the capacity to consent to the [removal and] restraint?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of employee defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5 [and] *[select 6, 7, or both]*. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical  
pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

[6. Did *[name of plaintiff]* prove by clear and convincing evidence that *[name of employee defendant]* was an officer, director, or managing agent of *[name of employer defendant]* acting on behalf of *[name of defendant]*.  
\_\_\_ Yes \_\_\_ No]

[7. Did *[name of plaintiff]* prove 1 through 4 above by clear and convincing evidence?  
\_\_\_ Yes \_\_\_ No]

[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What were *[name of decedent]*'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?  
\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

**attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102A, *Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants*.*~~

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Optional questions 6, 7, and 8 address enhanced remedies. If the abduction is proved by clear and convincing evidence, attorney fees, costs, and a decedent’s predeath pain and suffering may be recovered. (See Welf. & Inst. Code, § 15657.05.) If any of these remedies are sought against the employer, include question 6. (See Welf. & Inst. Code, § 15657.05(c).) Question 6 may be altered to correspond to one of the alternative bracketed options for employer liability in CACI No. 3102A.

If any enhanced remedies are sought against either the individual or the employer, include question 7. If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

In the transitional language after question 4, direct the jury to answer questions 6, 7, or both, depending on which questions are to be included. If question 7 is to be included but question 6 is not, then 7 will be renumbered as 6.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3107. Abduction—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.06, 15657.05; Civ. Code, § 3294(b))**

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We answer the questions submitted to us as follows:

1. Was *[name of plaintiff/decedent]* [65 years of age or older/a dependent adult] at the time of the conduct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]*'s employee [remove *[name of plaintiff/decedent]* from California and] restrain [him/her/*[name of plaintiff/decedent]*] from returning to California?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff/decedent]* lack the capacity to consent to the [removal and] restraint?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the employee's conduct a substantial factor in causing harm to *[name of plaintiff/decedent]*?  
 Yes  No

If your answer to question 4 is yes, then answer question[s] 5 [and 6]. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff/decedent]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

**[b. Future economic loss**

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

**[c. Past noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

**[d. Future noneconomic loss, including [physical pain/mental suffering:]**

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

- [6. Did [name of plaintiff] prove by clear and convincing evidence that the employee was an officer, a director, or a managing agent of [name of defendant] acting in on behalf of [name of defendant]?**  
 \_\_\_ Yes \_\_\_ No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

- 7. Did [name of plaintiff] prove 1 through 4 by clear and convincing evidence?**  
 \_\_\_ Yes \_\_\_ No]

**[If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

- 8. What were [name of decedent]'s damages for noneconomic loss for pain, suffering, or disfigurement incurred before death?**  
 \$ \_\_\_\_\_]

Signed: \_\_\_\_\_

## Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised April 2007, April 2008, October 2008, December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3109, *Abduction—Essential Factual Elements*, CACI No. 3110, *Abduction—Enhanced Remedies Sought*, and CACI No. 3102B, *Employer Liability for Enhanced Remedies—Employer Defendant Only*.~~

Question 3 can be altered to correspond to the alternative bracketed option in element 3 of CACI No. 3109.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

Questions 6 and 7 are required to obtain employer liability for enhanced remedies, including attorney fees and costs. (See Welf. & Inst. Code, § 15657.05(b); Code Civ. Proc., § 377.34.) Question 6 may be altered to correspond to one of the alternative bracketed options in CACI No. 3102B.

If the abduction led to the abductee’s death, in question 5 include only item 5a for past economic loss. But also include the transitional language after question 7 and include question 8.

If punitive damages are sought, incorporate language from a verdict form for punitive damages. (See CACI Nos. VF-3900–VF-3904.)

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give

CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-3200. Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities (Civ. Code, § 1793.2(d))**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* buy *[a/an]* *[consumer good]* *[from/distributed by/manufactured by]* *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* give *[name of plaintiff]* a warranty?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the *[consumer good]* fail to perform as represented in the warranty?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* or its authorized repair facility repair the *[consumer good]* to conform to the *[written statement/represented quality]* after a reasonable number of opportunities?  
 Yes  No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* fail to replace the *[consumer good]* or reimburse *[name of plaintiff]* the appropriate amount of money?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What amount is *[name of plaintiff]* entitled to receive as reimbursement for the

[consumer good]? Calculate as follows:

Determine: Purchase price of the [consumer good]: \$ \_\_\_\_\_

Subtract: Value of use by [name of plaintiff] before [he/she/it] discovered the defect: \$ \_\_\_\_\_

Subtract: The amount, if any, that [name of defendant] previously reimbursed [name of plaintiff] for the [consumer good] \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

7. What amount is plaintiff entitled to recover for [insert item(s) of claimed incidental damages]? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised June 2005, October 2008, December 2010, December 2011, December 2016*

### Directions for Use

*This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, and CACI No. 3240, Reimbursement Damages—Consumer Goods.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, and CACI No. 3240, Reimbursement Damages—Consumer Goods.*~~

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 7 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3202. Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Affirmative Defense—Unauthorized or Unreasonable Use (Civ. Code, § 1793.2(d))**

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* buy *[a/an]* *[consumer good]* *[from/distributed by/manufactured by]* *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* give *[name of plaintiff]* a warranty?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the *[consumer good]* fail to perform as represented in the warranty?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was the failure to comply with the warranty caused by unauthorized or unreasonable use of the *[consumer good]* following its sale?  
 Yes  No

If your answer to question 4 is no, then answer question 5. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did *[name of defendant]* or its authorized repair facility repair the *[consumer good]* to conform to the *[written statement/represented quality]* after a reasonable number of opportunities?  
 Yes  No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Did *[name of defendant]* fail to replace the *[consumer good]* or reimburse *[name of*

*plaintiff*] the appropriate amount of money?

\_\_\_ Yes \_\_\_ No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

7. **What amount is [name of plaintiff] entitled to receive as reimbursement for the [consumer good]? Calculate as follows:**

**Determine: Purchase price of the [consumer good]:** \$ \_\_\_\_\_

**Subtract: Value of use by [name of plaintiff] before [he/she/it] discovered the defect:**  
\$ \_\_\_\_\_

**Subtract: The amount, if any, that [name of defendant] previously reimbursed [name of plaintiff] for the [consumer good]**  
\$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

**[Answer question 8.]**

8. **What amount is [name of plaintiff] entitled to recover for [insert item(s) of claimed incidental damages]?**

\$ \_\_\_\_\_]

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised June 2005, October 2008, December 2010, December 2011, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 3200, Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements, CACI No. 3220, Affirmative Defense—Unauthorized or Unreasonable Use, and CACI No. 3240, Reimbursement Damages—*

Consumer Goods.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3200, *Failure to Repurchase or Replace Consumer Good After Reasonable Number of Repair Opportunities—Essential Factual Elements*, CACI No. 3220, *Affirmative Defense—Unauthorized or Unreasonable Use*, and CACI No. 3240, *Reimbursement Damages—Consumer Goods*.~~

If the plaintiff was unable to deliver the good, modify question 4 as in element 4 of CACI No. 3200. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages. Question 8 can be used to account for claimed incidental damages included under CACI No. 3242, *Incidental Damages*.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

VF-3206. Breach of Disclosure Obligations

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We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* **[buy/lease]** a *[motor vehicle]* from *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* know or should *[he/she/it]* have known that the vehicle had been returned to the manufacturer under **[California's/*[name of state]*'s]** motor vehicle warranty laws?  
 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. Prior to the **[sale/leasing]**, did *[name of defendant]* fail to disclose to *[name of plaintiff]*, in clear and simple language, the nature of the defect experienced by the original **[buyer/lessee]** of the vehicle?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s failure to clearly disclose the defect a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised June 2005, December 2010, December 2016*

### **Directions for Use**

This verdict form is based on CACI No. 3206, *Breach of Disclosure Obligations—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3206, *Breach of Disclosure Obligations—Essential Factual Elements*. See CACI No. VF-3201 for additional questions in the event the plaintiff is claiming consequential damages.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If defendant is a manufacturer, substitute question 2 with a question modeled after the first bracketed option in element 2. Depending on the facts, question 4 can be modified to cover other grounds for breach of the warranty, as in elements 5 and 6 of CACI No. 3206. Make sure that the “yes” and “no” directions match appropriately.

Omit question 4 if the plaintiff is not seeking consequential damages.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



VF-3300. Locality Discrimination

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [offer to sell/sell/furnish] [product/service] at a lower price in one [location/section/community/city] in California than in another [location/section/community/city] in California?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] intend to destroy competition from an established dealer [or to prevent competition from any person who in good faith intended and attempted to become such a dealer]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

Directions for Use

This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3301. Locality Discrimination Claim—Affirmative Defense—Cost Justification**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] [offer to sell/sell/furnish] [*product/service*] at a lower price in one [location/section/community/city] in California than in another [location/section/community/city] in California?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the locality discrimination within the law?  
 Yes  No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of defendant*] intend to destroy competition from an established dealer [or to prevent competition from any person who in good faith intended and attempted to become such a dealer]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]'s damages? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*, and CACI No. 3330, *Affirmative Defense to Locality Discrimination Claim—Cost Justification*.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3300, *Locality Discrimination—Essential Factual Elements*, and CACI No. 3330, *Affirmative Defense to Locality Discrimination Claim—Cost Justification*.*~~

If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3302. Below Cost Sales

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* *[offer to sell/sell]* *[product/service]* at a price that was below cost?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of defendant]*'s purpose to injure competitors or destroy competition?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are *[name of plaintiff]*'s damages? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After *[this verdict form has/all verdict forms have]* been signed, notify the *[clerk/bailiff/court attendant]* that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 3301, Below Cost Sales—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified

depending on the facts of the case.

~~This verdict form is based on CACI No. 3301, *Below Cost Sales—Essential Factual Elements*.~~

If the facts involve a gift rather than a sale, question 1 can be modified according to the second alternative in element 1 of CACI No. 3301.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3303. Below Cost Sales Claim—Affirmative Defense—Closed-out, Discontinued, Damaged, or Perishable Items**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [offer to sell/sell] *[product/service]* at a price that was below cost?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were *[his/her/its]* sales in the course of closing out, in good faith, all or any part of *[his/her/its]* supply of *[product]*, in order to stop trade in *[product]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4.

3. Did *[name of defendant]* give sufficient notice of the sale to the public?  
 Yes  No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s purpose to injure competitors or destroy competition?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3301, ~~Below Cost Sales—Essential Factual Elements~~, and CACI No. 3331, ~~Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Closed-out, Discontinued, Damaged, or Perishable Items.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3301, ~~Below Cost Sales—Essential Factual Elements~~, and CACI No. 3331, ~~Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Closed-out, Discontinued, Damaged, or Perishable Items.~~*~~

If other grounds for this defense are asserted, question 2 should be modified according to question 2 in CACI No. 3331. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*



VF-3304. Loss Leader Sales

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [offer to sell/sell/offer the use of] [product/service] at prices that were below [his/her/its] costs?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s purpose to influence, promote, or encourage the purchase of other merchandise from [name of defendant]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s intent to injure competitors or destroy competition?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]'s damages? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*.~~

If other grounds of liability are asserted, question 2 can be modified according to the bracketed alternatives in element 2 of CACI No. 3302.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3305. Loss Leader Sales Claim—Affirmative Defense—Meeting Competition**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* [offer to sell/sell/offer the use of] *[product/service]* at prices that were below *[his/her/its]* costs?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Were the sales of *[product/service]* made in an attempt, in good faith, to meet the legal prices of a competitor selling the same *[product/service]* in the ordinary course of business in the same area?  
 Yes  No

If your answer to question 2 is no, then answer question 3. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of defendant]*'s purpose to influence, promote, or encourage the purchase of other merchandise from *[name of defendant]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s intent to injure competitors or destroy competition?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What are *[name of plaintiff]*'s damages? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
                    **Presiding Juror**

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*, and CACI No. 3333, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Meeting Competition*.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3302, *Loss Leader Sales—Essential Factual Elements*, and CACI No. 3333, *Affirmative Defense to Locality Discrimination, Below Cost Sales, and Loss Leader Sales Claims—Meeting Competition*.*~~

If other grounds of liability are asserted, question 3 can be modified according to the alternative brackets in element 2 of CACI No. 3302. If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3306. Secret Rebates

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] secretly [[give/receive] [payments/rebates/refunds/commissions/unearned discounts]] [or] [[give to some buyers/receive] services or privileges that were not given to other buyers purchasing on like terms and conditions]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was a competitor harmed?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the [payment/allowance] have a tendency to destroy competition?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of defendant*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [*name of plaintiff*]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3320, *Secret Rebates—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3320, *Secret Rebates—Essential Factual Elements*.~~

Question 2 should be omitted if the plaintiff is a competitor of the defendant, because that issue is covered by question 4.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3307. Secret Rebates Claim—Affirmative Defense—Functional Classifications**

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We answer the questions submitted to us as follows:

1. Did [*name of defendant*] secretly [[give/receive] [payments/rebates/refunds/commissions/unearned discounts]/ [or] [give to some buyers/receive] services or privileges that were not given to other buyers purchasing on like terms and conditions]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] create different classes of customers, such as [broker/jobber/wholesaler/retailer/[*insert other*]]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, skip questions 3, 4, and 5 and answer question 6.

3. Did customers in the different classes perform different functions and assume the risk, investment, and costs involved?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was the difference in [price/rebate/discount/special services/privileges] for [*product/service*] given only in those sales where the favored buyer performed the function on which the claim of a different class is based?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was the difference in price reasonably related to the value of such function?  
\_\_\_ Yes \_\_\_ No

If your answer to question 5 is no, then answer question 6. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was a competitor harmed?  
\_\_\_ Yes \_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did the [payment/allowance] have a tendency to destroy competition?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [name of plaintiff]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

#### Directions for Use

This verdict form is based on CACI No. 3320, Secret Rebates—Essential Factual Elements, and CACI No. 3332, Affirmative Defense to Locality Discrimination, Below Cost Sales, Loss Leader Sales, and Secret Rebates—Functional Classifications.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3320, Secret Rebates—Essential Factual Elements, and CACI No. 3332, Affirmative Defense to Locality Discrimination, Below Cost Sales, Loss Leader Sales, and Secret Rebates—Functional Classifications.~~



Question 6 should be omitted if the plaintiff is a competitor of the defendant, because that issue is covered by question 8.

If other affirmative defenses are asserted, this form can be modified accordingly. See other Unfair Practices Act verdict forms for examples.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3400. Horizontal and Vertical Restraints (Use for Direct Competitors)—Price Fixing**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [and [name(s) of alleged coparticipant(s)]] agree to fix [or] [set/raise/lower/maintain/stabilize] prices [or other terms of trade] charged or to be charged for [product/service]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

---

New September 2003; Revised December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3400, *Horizontal and Vertical Restraints (Use for Direct Competitors) —Price Fixing—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3400, *Horizontal and Vertical Restraints (Use for Direct Competitors) —Price Fixing—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3401. Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce**

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We answer the questions submitted to us as follows:

1. Were or are [name of defendant] and [name of alleged coparticipant] competitors in the same or related markets?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [name of defendant] and [name of alleged co-participant] agree to allocate or divide [customers/territories/products]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was [name of defendant]'s and [name of alleged co-participant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. What are [name of plaintiff]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)*—

*Allocation of Trade or Commerce—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)*—*Allocation of Trade or Commerce—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3402. Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Affirmative Defense—*In Pari Delicto***

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We answer the questions submitted to us as follows:

1. Were or are [*name of defendant*] and [*name of alleged coparticipant*] competitors in the same or related markets?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of defendant*] and [*name of alleged coparticipant*] agree to allocate or divide [customers/territories/products]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of plaintiff*] and [*name of defendant*] have substantially equal economic strength?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, skip questions 4 and 5 and answer question 6.

4. Was [*name of plaintiff*] at least equally responsible for the harmful conduct as [*name of defendant*]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, skip question 5 and answer question 6.

5. Was [*name of plaintiff*] compelled by economic pressure to enter into the agreement?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

#### Directions for Use

This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Essential Factual Elements*, and CACI No. 3431, *Affirmative Defense—In Pari Delicto*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3401, *Horizontal Restraints (Use for Direct Competitors)—Allocation of Trade or Commerce—Essential Factual Elements*, and CACI No. 3431, *Affirmative Defense—In Pari Delicto*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3403. Horizontal Restraints—Dual Distributor Restraints**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* sell *[products]* directly in competition with *[name of plaintiff]* to a significant portion of *[name of plaintiff]*'s customers or potential customers?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* [stop doing business with/refuse to deal with/restrain] *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of plaintiff]*'s refusal to agree to *[name of defendant]*'s *[specify the claimed restraint, e.g., territorial or customer restrictions]* a motivating reason for the decision to [end business with/refuse to deal with/restrain] *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
\_\_\_ Yes \_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court



attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3402, *Horizontal Restraints—Dual Distributor Restraints—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3402, *Horizontal Restraints—Dual Distributor Restraints—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3404. Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [and [name of alleged coparticipant]] agree to [specify claimed refusal to deal, e.g., “refuse to sell to [name of plaintiff]”]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_ Yes \_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are [name of plaintiff]’s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3403, *Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3403, *Horizontal Restraints (Use for Direct Competitors)—Group Boycott—Per Se Violation—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3405. Horizontal Restraints—Group Boycott—Rule of Reason**

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We answer the questions submitted to us as follows:

1. Did [name of defendant] [and [name of alleged coparticipant]] agree to [describe conduct, e.g., “formulate an arbitrary membership limitation rule with [identify other participant[s]]”]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the purpose or effect of [name of defendant]’s conduct to restrain competition?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are [name of plaintiff]’s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

~~This verdict form is based on CACI No. 3404, *Horizontal Restraints—Group Boycott—Rule of Reason—Essential Factual Elements*.~~

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3404, *Horizontal Restraints—Group Boycott—Rule of Reason—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3406. Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason**

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We answer the questions submitted to us as follows:

1. Did *[name of defendant]* **and** *[name of alleged coparticipant[s]]* agree to *[describe conduct constituting an unreasonable restraint of trade]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was the purpose or effect of *[name of defendant]*'s conduct to restrain competition?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements.*~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3407. Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason Affirmative Defense—  
“Noerr-Pennington” Doctrine**

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We answer the questions submitted to us as follows:

1. **Did [name of defendant] [and [name of alleged coparticipant]] agree to [describe conduct constituting an unreasonable restraint of trade]?**  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Were [name of defendant]’s actions before [name of governmental body] undertaken without regard to the merits?**  
 Yes  No

**If your answer to question 2 is yes, then skip question 3 and answer question 4. If you answered no, answer question 3.**

3. **Was the reason [name of defendant] engaged in [specify the petitioning activity, e.g., “filing an objection to an environmental impact report”] to use the [specify the claimed process, e.g., “environmental agency approval”] process to harm [name of plaintiff] by [specify the manner of harm, e.g., “delaying [name of plaintiff]’s entry into the market”], rather than to obtain a successful outcome from that process?**  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Was the purpose or effect of [name of defendant]’s conduct to restrain competition?**  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **Did the anticompetitive effect of the restraint[s] outweigh any beneficial effect on competition?**  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**



6. Was [name of defendant]’s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]’s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

#### Directions for Use

This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*, and CACI No. 3430, “*Noerr-Pennington*” Doctrine.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3405, *Horizontal and Vertical Restraints (Use for Direct Competitors or Supplier/Reseller Relations)—Other Unreasonable Restraint of Trade—Rule of Reason—Essential Factual Elements*, and CACI No. 3430, “*Noerr-Pennington*” Doctrine.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3408. Tying—Real Estate, Products, or Services (Bus. & Prof. Code, § 16720)**

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We answer the questions submitted to us as follows:

1. Are *[tying item]* and *[tied item]* separate and distinct?  
 Yes  No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. Did *[name of defendant]* sell *[tying item]* only if the buyer also purchased *[tied item]*, or did *[name of defendant]* sell *[tying item]* and require or otherwise coerce buyers to *[also purchase [tied item]] [agree not to purchase [tied item] from any other supplier]*?  
 Yes  No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. Did *[name of defendant]* have sufficient economic power in the market for *[tying item]* to coerce at least some buyers of *[tying item]* into *[purchasing [tied item]] [agreeing not to purchase [tied item] from a competitor of [name of defendant]]*?  
 Yes  No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. Did the conduct involve a substantial amount of sales, in terms of the total dollar value of *[tied product or service]*?  
 Yes  No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. What are [name of plaintiff]'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

### Directions for Use

This verdict form is based on CACI No. 3420, *Tying—Real Estate, Products, or Services—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~This verdict form is based on CACI No. 3420, *Tying—Real Estate, Products, or Services—Essential Factual Elements*.~~

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3409. Tying—Products or Services (Bus. & Prof. Code, § 16727)**

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We answer the questions submitted to us as follows:

1. Are *[tying item]* and *[tied product or service]* separate and distinct?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* sell *[tying product]* only if the buyer also purchased *[tied product or service]*, or did *[name of defendant]* sell *[tying product]* and require or otherwise coerce buyers *[to also purchase [tied product or service]]* *[to agree not to purchase [tied product or service] from any other supplier]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Does *[name of defendant]* have sufficient economic power in the market for *[tying product]* to coerce at least some consumers into purchasing *[tied product or service]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court

**attendant] that you are ready to present your verdict in the courtroom.**

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*New September 2003; Revised December 2010, December 2016*

### **Directions for Use**

*This verdict form is based on CACI No. 3421, ~~Tying-Products or Services—Essential Factual Elements.~~*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3421, Tying-Products or Services—Essential Factual Elements.*~~

If alternative grounds are asserted regarding question 3, this question can be modified according to element 3 of CACI No. 3421.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

*If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.*

VF-3500. Fair Market Value Plus Goodwill

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We answer the questions submitted to us as follows:

1. What was the fair market value of the property on [insert date of valuation]?  
\$ \_\_\_\_\_

Answer question 2.

2. What was the value of the loss of goodwill on [insert date of valuation]?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2007, December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3513, Goodwill.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3513, Goodwill. If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3501. Fair Market Value Plus Severance Damages**

---

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [date of valuation]?  
\$ \_\_\_\_\_

Answer question 2.

2. What was the fair market value of the remaining property on [date of valuation]?  
\$ \_\_\_\_\_

Answer question 3.

3. What will the fair market value of the remaining property be after the [name of public entity]'s proposed project is completed?  
\$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New September 2003; Revised December 2010, December 2016

**Directions for Use**

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3511, Permanent Severance Damages.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3511, Severance Damages. If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3502. Fair Market Value Plus Loss of Inventory/Personal Property**

---

We answer the questions submitted to us as follows:

1. What was the fair market value of the property taken on [insert date of valuation]?  
\$ \_\_\_\_\_

[Answer question 2.]

2. What was the retail value on [insert date of valuation] of the portion of the lost inventory or personal property that was unique and not readily replaceable?  
\$ \_\_\_\_\_]

[Answer question 3.]

3. What was the wholesale value on [insert date of valuation] of the portion of the lost inventory or personal property that was readily replaceable and not unique?  
\$ \_\_\_\_\_]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New September 2003; Revised December 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3507, Personal Property and Inventory.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3501, "Fair Market Value" Explained, and CACI No. 3507, Personal Property and Inventory.*~~

In an eminent domain action, the jury finds only the amount of compensation. (*Emeryville Redevelopment v. Harcross Pigments* (2002) 101 Cal.App.4th 1083, 1116 [125 Cal.Rptr.2d 12].) The court should determine whether there is inventory or personal property that is unique and not readily replaceable. The jury should then determine the value of that property.



If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3700. Negligence—Vicarious Liability**

---

We answer the questions submitted to us as follows:

1. Was *[name of agent]* negligent?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was *[name of agent]*'s negligence a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Was *[name of agent]* *[name of defendant]*'s *[agent/employee/[insert other relationship]]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was *[name of agent]* acting within the scope of *[his/her]* *[agency/employment/[insert other relationship]]* when *[he/she]* harmed *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_ ]

[b. Future economic loss

[lost earnings	\$ _____ ]
[lost profits	\$ _____ ]
[medical expenses	\$ _____ ]
[other future economic loss	\$ _____ ]
<b>Total Future Economic Damages: \$ _____ ]</b>	

[c. Past noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

[d. Future noneconomic loss, including [physical pain/mental suffering:] \$ \_\_\_\_\_ ]

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
                    **Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New September 2003; Revised April 2007, December 2010, December 2016*

**Directions for Use**

*This verdict form is based on CACI No. 3701, Tort Liability Asserted Against Principal—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

~~*This verdict form is based on CACI No. 3701, Tort Liability Asserted Against Principal—Essential Factual Elements.*~~

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-3905. Damages for Wrongful Death (Death of an Adult)**

---

We answer the questions submitted to us as follows:

1. What are *[name of plaintiff]*'s economic damages?

[a. Past financial support that *[name of decedent]*  
\_\_\_\_\_ would have contributed to the family: \$ \_\_\_\_\_ ]

[b. Future financial support that *[name of]*  
\_\_\_\_\_ *decedent* would have contributed to the  
\_\_\_\_\_ family: \$ \_\_\_\_\_ ]

[c. Past losses of gifts or benefits that *[name of]*  
\_\_\_\_\_ *plaintiff* would have expected to receive  
\_\_\_\_\_ from *[name of decedent]*: \$ \_\_\_\_\_ ]

[d. Future losses of gifts or benefits that *[name]*  
\_\_\_\_\_ *of plaintiff* would have expected to receive  
\_\_\_\_\_ from *[name of decedent]*: \$ \_\_\_\_\_ ]

[e. *[Name of decedent]*'s funeral and burial  
\_\_\_\_\_ expenses: \$ \_\_\_\_\_ ]

[f. Past household services that *[name of]*  
\_\_\_\_\_ *decedent* would have provided: \$ \_\_\_\_\_ ]

[g. Future household services that *[name of]*  
\_\_\_\_\_ *decedent* would have provided: \$ \_\_\_\_\_ ]

2. What are *[name of plaintiff]*'s noneconomic damages?

[a. The loss of [name of decedent]'s love,  
\_\_\_\_\_ companionship, comfort, care, assistance,  
\_\_\_\_\_ protection, affection, society, and moral  
\_\_\_\_\_ support, [and] [the enjoyment of sexual  
\_\_\_\_\_ relations/[name of decedent]'s training and  
\_\_\_\_\_ guidance] from [insert date of death] to the  
\_\_\_\_\_ present:

\$ \_\_\_\_\_ ]

[b. The loss of [name of decedent]'s love,  
\_\_\_\_\_ companionship, comfort, care, assistance,  
\_\_\_\_\_ protection, affection, society, and moral  
\_\_\_\_\_ support, [and] [the enjoyment of sexual  
\_\_\_\_\_ relations/[name of decedent]'s training and  
\_\_\_\_\_ guidance] from today forward:

\$ \_\_\_\_\_ ]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

---

New April 2004; Revised December 2010, December 2016

### Directions for Use

This form is based on CACI No. 3921, *Wrongful Death (Death of an Adult)*.

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.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

~~This form is based on CACI No. 3921, *Wrongful Death (Death of an Adult)*.~~

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-3906. Damages for Wrongful Death (Parents' Recovery for Death of a Minor Child)**

---

We answer the questions submitted to us as follows:

1. What are *[name of plaintiff]*'s economic damages?

[a. Past financial support that *[name of decedent]* would have contributed to the family:

\$ \_\_\_\_\_ ]

[b. Future financial support that *[name of decedent]* would have contributed to the family:

\$ \_\_\_\_\_ ]

[c. Past losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*:

\$ \_\_\_\_\_ ]

[d. Future losses of gifts or benefits that *[name of plaintiff]* would have expected to receive from *[name of decedent]*:

\$ \_\_\_\_\_ ]

[e. *[Name of decedent]*'s funeral and burial expenses:

\$ \_\_\_\_\_ ]

[f. Past household services that *[name of decedent]* would have provided:

\$ \_\_\_\_\_ ]

[g. Future household services that *[name of decedent]* would have provided:

\$ \_\_\_\_\_ ]

2. What are [name of plaintiff]’s noneconomic damages?

[a. The loss of [name of decedent]’s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from [insert date of death] to the present:

\$ \_\_\_\_\_ ]

[b. The loss of [name of decedent]’s love, companionship, comfort, care, assistance, protection, affection, society, and moral support from today forward:

\$ \_\_\_\_\_ ]

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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New April 2004; Revised December 2010, December 2016

### Directions for Use

This form is based on CACI No. 3922, *Wrongful Death (Parents’ Recovery for Death of a Minor Child)*.

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.

Delete any questions that do not apply to the facts of the case. Normally, this form should be combined with the verdict form(s) on the underlying cause(s) of action.

~~This form is based on CACI No. 3922, *Wrongful Death (Parents’ Recovery for Death of a Minor Child)*.~~ If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.



**VF-4200. Actual Intent to Hinder, Delay, or Defraud Creditor—Affirmative Defense—Good Faith**

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We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incure an obligation] to [*name of defendant*]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] [transfer the property/incure the obligation] with the intent to hinder, delay, or defraud one or more of [his/her/its] creditors?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was [*name of debtor*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did [[*name of defendant*]/[*name of third party*]] receive the property from [*name of debtor*] in good faith?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, skip question 6 and answer question 7.

6. Did [[*name of defendant*]/[*name of third party*]] receive the property for a reasonably equivalent value?  
 Yes  No

If your answer to question 6 is yes, stop here, answer no further questions, and have

**the presiding juror sign and date this form. If you answered no, then answer question 7.**

7. **What are [name of plaintiff]'s damages?**

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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*New December 2011; Revised June 2016, December 2016*

#### **Directions for Use**

This verdict form is based on CACI No. 4200, *Actual Intent to Hinder, Delay, or Defraud a Creditor—Essential Factual Elements*, and CACI No. 4207, *Affirmative Defense—Good Faith*. The defendant is the transferee of the property. The transferee may have received the property in good faith even though the debtor had a fraudulent intent. (See *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1299 [123 Cal.Rptr.2d 924].)

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-4201. Constructive Fraudulent Transfer—No Reasonably Equivalent Value Received**

---

We answer the questions submitted to us as follows:

1. Did *[name of plaintiff]* have a right to payment from *[name of debtor]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of debtor]* [transfer property/incur an obligation] to *[name of defendant]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of debtor]* fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. [[Was *[name of debtor]* [in business/about to start a business]/Did *[name of debtor]* enter into a transaction] when [his/her/its] remaining assets were unreasonably small for the [business/transaction]?]

[or]

[Did *[name of debtor]* intend to incur debts beyond [his/her/its] ability to pay as they became due?]

[or]

[Did *[name of debtor]* believe or should [he/she/it] reasonably have believed that [he/she/it] would incur debts beyond [his/her/its] ability to pay as they became due?]

Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of debtor]*'s conduct a substantial factor in causing *[name of plaintiff]*'s harm?

\_\_\_ Yes \_\_\_ No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

**6. What are [name of plaintiff]’s damages?**

**TOTAL \$ \_\_\_\_\_**

**Signed:** \_\_\_\_\_  
**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

---

*New December 2011; Revised June 2016, December 2016*

**Directions for Use**

This verdict form is based on CACI No. 4202, *Constructive Fraudulent Transfer—No Reasonably Equivalent Value Received—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.

**VF-4202. Constructive Fraudulent Transfer—Insolvency**

---

We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] have a right to payment from [*name of debtor*]?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did [*name of debtor*] [transfer property/incur an obligation] to [*name of defendant*]?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did [*name of debtor*] fail to receive a reasonably equivalent value in exchange for the [transfer/obligation]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did [*name of plaintiff*]'s right to payment from [*name of debtor*] arise before [*name of debtor*] [transferred property/incurred an obligation]?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of debtor*] insolvent at that time or did [*name of debtor*] become insolvent as a result of the [transfer/ obligation]?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of debtor*]'s conduct a substantial factor in causing [*name of plaintiff*]'s harm?  
 Yes  No

**If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

7. What are [name of plaintiff]'s damages?

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

Dated: \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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New December 2011; Revised June 2016, December 2016

#### Directions for Use

This verdict form is based on CACI No. 4203, *Constructive Fraudulent Transfer—Insolvency—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest. ~~This form may be modified if the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest on specific losses that occurred prior to judgment.~~

**VF-4600. False Claims Act: Whistleblower Protection (Gov. Code, § 12653)**

---

We answer the questions submitted to us as follows:

1. Was *[name of plaintiff]* an employee of *[name of defendant]*?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of plaintiff]* *[specify acts done in furthering the false claims action or to stop a false claim]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* act *[in furtherance of a false claims action/to stop a false claim]*?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* *[discharge/specify other adverse action]* *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Were *[name of plaintiff]*'s acts *[in furtherance of a false claims action/to stop a false claim]* a substantial motivating reason for *[name of defendant]*'s decision to *[discharge/other adverse action]* *[him/her]*?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was *[name of defendant]*'s conduct a substantial factor in causing harm to *[name of plaintiff]*?  
 Yes  No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other past economic loss \$ \_\_\_\_\_]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings \$ \_\_\_\_\_]

[lost profits \$ \_\_\_\_\_]

[medical expenses \$ \_\_\_\_\_]

[other future economic loss \$ \_\_\_\_\_]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.



This verdict form is based on CACI No. 4600, *False Claims Act: Whistleblower Protection—Essential Factual Elements*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

If specificity is not required, users do not have to itemize all the damages listed in question 7 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Affirmative Defense—Same Decision (Gov. Code, § 8547.8(c))**

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**We answer the questions submitted to us as follows:**

1. **Did [name of plaintiff] [specify protected disclosure, e.g., report waste, fraud, abuse of authority, violation of law, threats to public health, bribery, misuse of government property]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

2. **Did [name of plaintiff]’s communication [disclose/ [or] demonstrate an intention to disclose] evidence of [an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

3. **Did [name of plaintiff] make this communication in good faith [for the purpose of remediating the health or safety condition]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

4. **Did [name of defendant] [discharge/specify other adverse action] [name of plaintiff]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

5. **Was [name of plaintiff]’s communication a contributing factor in [name of defendant]’s decision to [discharge/other adverse action] [him/her]?**  
\_\_\_\_ Yes \_\_\_\_ No

**If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.**

6. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [name of defendant] have [discharged/specify other adverse action] [name of plaintiff] anyway at that time, for legitimate, independent reasons?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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New December 2015, Revised December 2016

### **Directions for Use**

This verdict form is based on CACI No. 4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*, and CACI No. 4602, *Affirmative Defense—Same Decision*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If a health or safety violation is presented in question 2, include the bracketed language at the end of question 3.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. Question 7 must be proved by clear and convincing evidence. (See Gov. Code, § 8547.8(e).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**VF-4602. Whistleblower Protection—Affirmative Defense of Same Decision (Lab. Code, §§ 1102.5, 1102.6)**

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s employer?  
 Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did *[name of defendant]* believe that *[name of plaintiff]* [had disclosed/might disclose] to a [government agency/law enforcement agency/person with authority over *[name of plaintiff]*]/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance] that *[specify information disclosed]*?  
 Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did *[name of plaintiff]* have reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?  
 Yes  No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Did *[name of defendant]* [discharge/specify other adverse action] *[name of plaintiff]*?  
 Yes  No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was *[name of plaintiff]*'s disclosure of information a contributing factor in *[name of defendant]*'s decision to [discharge/other adverse action] [him/her]?  
 Yes  No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [name of defendant]'s conduct a substantial factor in causing harm to [name of plaintiff]?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Would [name of defendant] have [discharged/specify other adverse action] [name of plaintiff] anyway at that time, for legitimate, independent reasons?  
\_\_\_\_ Yes \_\_\_\_ No

If your answer to question 7 is no, then answer question 8. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [name of plaintiff]'s damages?

[a. Past economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other past economic loss \$ \_\_\_\_\_]  
Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss  
[lost earnings \$ \_\_\_\_\_]  
[lost profits \$ \_\_\_\_\_]  
[medical expenses \$ \_\_\_\_\_]  
[other future economic loss \$ \_\_\_\_\_]  
Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]  
\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
Presiding Juror

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

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New December 2015, Revised December 2016

### **Directions for Use**

This verdict form is based on CACI No. 4603, *Whistleblower Protection—Essential Factual Elements*, and CACI No. 4604, *Affirmative Defense—Same Decision*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Questions 2 and 3 may be replaced with one of the other options for elements 2 and 3 in CACI No. 4603. If the third options are used, replace “disclosure of information” in question 5 with “refusal to (*specify*).”

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. Question 7 must be proved by clear and convincing evidence. (See Lab. Code, § 1102.6.)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Uniform Bail and Penalty Schedules: 2017 Edition

*Committee or other entity submitting the proposal:*  
Traffic Advisory Committee

*Staff contact (name, phone and e-mail):* Kimberly DaSilva, (415) 865-4534

*Identify project(s) on the committee's annual agenda that is the basis for this item:*  
Approved by RUPRO:  
Revision of statewide Uniform Bail and Penalty Schedule, 2017 Edition

Project description from annual agenda:  
Adoption of revised statewide Uniform Bail and Penalty Schedules to conform to legislation and use for updating courts' county bail schedules as required by Penal Code section 1269b..

*If requesting July 1 or out of cycle, explain:*  
N/A

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)





## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

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Title	Agenda Item Type
Uniform Bail and Penalty Schedules: 2017 Edition	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Revised Uniform Bail and Penalty Schedules	January 1, 2017
Recommended by	Date of Report
Traffic Advisory Committee	November 14, 2016
Hon. Gail Dekreon, Chair	Contact
	Kimberly DaSilva, 415-865-4534
	<a href="mailto:kimberly.dasilva@jud.ca.gov">kimberly.dasilva@jud.ca.gov</a>

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### Executive Summary

The Traffic Advisory Committee recommends revisions to the Uniform Bail and Penalty Schedules, effective January 1, 2017. Vehicle Code section 40310 provides that the Judicial Council must annually adopt a uniform traffic penalty schedule for all nonparking Vehicle Code infractions. Under rule 4.102 of the California Rules of Court, trial courts, in performing their duty under Penal Code section 1269b, must revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for traffic infractions is established by the schedules approved by the Judicial Council. The recommended revisions bring the schedules into conformance with recent legislation and make technical corrective changes.

### Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2017, adopt the revised *Uniform Bail and Penalty Schedules, 2017 Edition*.

The proposed revision follows as Attachment B.

## **Previous Council Action**

At the Judicial Council meeting on December 11, 2015, the council adopted revised bail schedules for 2016.

## **Rationale for Recommendation**

Vehicle Code section 40310 requires that the Judicial Council annually adopt for Vehicle Code infractions a uniform traffic penalty schedule that conforms to new legislation. Additionally, Penal Code section 1269b and rule 4.102 of the California Rules of Court provide that trial courts must annually revise and adopt a countywide schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for Vehicle Code infractions is established by the uniform traffic penalty schedule adopted by the Judicial Council in accordance with section 40310.

Revisions to conform the 2017 schedules to recent changes in the law or to make technical corrective changes to the previous edition include the following:

1. Addition or modification of infraction offenses for violation of Vehicle Code sections:
  - 4456(a), reporting vehicle sales to the Department of Motor Vehicles;
  - 4456(b), reporting auction vehicle sales to the Department of Motor Vehicles;
  - 5011, display of identification plates;
  - 11754, rental of vehicle subject to recall;
  - 13386(i), prohibition of disclosure of individuals required to install ignition interlock device;
  - 21113, unlawful driving on public grounds;
  - 21655.1(a), driving in restricted use designated public transit bus lane;
  - 22354, failure to abide by speed limits;
  - 22500(m), stopping or parking in designated public transit bus lane;
  - 23123.5, driving while using a wireless device;
  - 24603(a–h), stop lamp requirements and specifications;
  - 24612(c), failure to display reflective material on trailer or semitrailer;
  - 25300(d)(2), display on warning device near disabled commercial vehicle;
  - 25300(d)(3), placement and display of warning device near disabled commercial vehicle;
  - 25300(d)(4), use of flame producing emergency signal near vehicles transporting explosives, flammable liquid, or gas;
  - 27000(a), adequate horn required;
  - 27003, unlawful use of siren by armored car;
  - 27007, use of sound amplification systems;
  - 27150.1, sale of exhaust system restricted;
  - 27315(d, e), mandatory use of seat belts;
  - 27360(a), use of child passenger restraint systems for children under 8;
  - 27360.5(a), mandatory use of child passenger restraints for children 8–16;
  - 27363(b), transportation for child in emergencies;

- 27363(f), transportation of child in rear-facing child passenger restraint systems in front seat;
  - 27400, limitations on use of headsets while driving or biking;
  - 27425(a), charter bus emergency lighting;
  - 27500(a), pneumatic tire standard regulations;
  - 27906, improper display of school bus sign;
  - 29200(c), repealed;
  - 31407, farm labor vehicle in motion with sharp tool unsecured;
  - 34500.3, cargo securement standards;
  - 34501(c), multiple safety violations on tour bus;
  - 34505.8(a), charter bus trip safety briefing;
  - 35401.9, overlength-driveaway-towaway combination; and,
  - 38374(a), sirens on off-highway motor vehicles.
2. Addition or modification of misdemeanor offenses for violation of Vehicle Code sections:
- 22513.1(a)(1), failure to maintain required information for tow and storage of vehicle;
  - 22513.1(b), business taking possession of a vehicle from a tow truck after hours;
  - 22513.1(c), failure to maintain and provide required information for tow and storage of vehicle;
  - 23152(e), driving under the influence of drug;
  - 23152(f), driving under the influence of drug;
  - 23152(g), driving under the influence of alcohol and drug;
  - 23153(e), driving under the influence of drug causing injury;
  - 23153(f), driving under the influence of drug while causing injury;
  - 23153(g), driving under the influence of alcohol and drug while causing injury;
  - 27317(a), manufacture or sell counterfeit or nonfunctioning airbag; and
  - 27317(b), sell or install device that disables a vehicle's counterfeit airbag indicator.
3. Addition or modification of Business and Professions Code sections:
- 25623(b), sale of powdered alcohol; and
  - 25623.5(b), possession of powdered alcohol.
4. Revision of a sample calculation in section IV. H on page vii of the preface regarding “total bail” for misdemeanors in the Uniform Public Utilities Bail and Penalty Schedule.
5. Revision of a sample calculation in section VII. D.3 on page x of the preface regarding the number of court operations fees and conviction assessments assessed in cases involving multiple offenses.

## **Comments, Alternatives Considered, and Policy Implications**

No alternatives were considered. Annual revision of the schedules is required by statute and by rule 4.102. The schedules must be updated to reflect new law so that courts are able to collect the proper amounts for violations that occur after December 31, 2016. The proposed 2017 Uniform Bail and Penalty Schedules were circulated for statewide comment from October 17–31, 2016. Of the five comments received, two agreed with the proposed changes if modified and three did not indicate agreement or disagreement. All comments, however, suggested specific revisions, which the committee considered, including suggested technical corrections in the previous edition. The comment chart with the committee’s responses is attached as Attachment A at pages 5-14 of this report.

## **Implementation Requirements, Costs, and Operational Impacts**

Courts will need to reprogram court case management systems, update courtesy notices, and provide training for court staff and judicial officers regarding changes in certain traffic infractions and new fines.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

Adoption of the revised schedules supports strategic Goal III, Modernization of Management and Administration. It also supports operational plan objective III.4: Uphold the integrity of court orders, protect court user safety, and improve public understanding of compliance requirements; improve the collection of fines, fees, and forfeitures statewide.

## **Attachments and Links**

1. Attachment A: SP16-12 Comment Chart
2. Attachment B: *Uniform Bail and Penalty Schedules, 2017 Edition*

**SP16-12**

**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment	Committee Response
1.	Donna Argo	AM	VC4456(a) - This only shows a POC option; should there be a fine row?	The entry concerns form requirements for dealers and lessor-retailers. While this violation is correctable, the schedule should also contain fine information for defendants who do not correct the violation. The committee agrees and will add a fine row to the schedule.
			VC4456(b)(1) - This only shows a POC option; should there be a fine row?	Please see the committee's response to the previous section.
			VC23123.5(a) - This violation is referenced in the Invitation to Comment but does not appear to be any changes in the Bail Schedule when compared to the 2016 Bail Schedule.	The entry concerns prohibited uses of electronic wireless communications devices while driving. Assembly Bill 1785 repealed section 23123.5 and added it back with a definitional change. While this entry was effected by new legislation, no actual change was necessary to the schedule.
			VC24612(c) - This only shows a POC option; should there be a fine row?	The entry concerns rear lighting requirements for trailers and semitrailers. While this violation is correctable, the schedule should also contain fine information for defendants who do not correct the violation. The committee agrees and will add a non-correctable violation row to the schedule.
			VC25300(d)(2) - This only shows a POC option; should there be a fine row?	The entry concerns temporary placement of lighted fuses for disabled vehicles. While this violation is correctable, the schedule should also

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**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment	Committee Response
			<p data-bbox="688 418 1394 516">VC22513.1(e) - This violation is referenced in the Invitation to Comment but is not in the actual Bail Schedule.</p>	<p data-bbox="1430 256 1982 418">contain fine information for defendants who do not correct the violation. The committee agrees and will add a non-correctable violation row to the schedule.</p> <p data-bbox="1430 423 1982 553">The committee thanks the commentator for this careful observation. The violation will not appear in the Judicial Council report.</p>
2.	Michelle Frazier Court Fiscal Director Superior Court of San Luis Obispo County	N/I	<p data-bbox="688 597 1394 695">My questions is regarding the example on page x of the Calculation of Bail, Traffic Violator School Fee and Court Operations Assessment for Multiple Offenses.</p> <p data-bbox="688 732 1394 862">This example shows two violations subject to TVS, and two correctable violations. The highest bail is used for calculation of the TVS, however, only one Court Operations Fee and one Conviction Assessment fee are charged.</p> <p data-bbox="688 899 1394 1029">It was my understanding from the information below, that a Court Operations Fee and a Conviction Assessment were to be charged for <u>each</u> TVS eligible violation . . . This example only shows one fee of each type charged.</p>	<p data-bbox="1430 597 1982 695">The committee agrees and will add a court operations fee and a conviction assessment to the referenced example.</p>

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Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition

	Commentator	Position	Comment	Committee Response		
			<p><b>Sample Calculation of Bail, Traffic Violator School Fee, and Court Operations Assessment for Multiple Offenses</b></p> <ol style="list-style-type: none"> <li>Violation of Vehicle Code sections 21453(b), 27360.5(a), 24252(a), and 26707.</li> <li>No prior convictions are charged.</li> <li>"Additional penalties" of between \$22 and \$29 as set out in section III for every \$10 of base fine or part thereof, plus the surcharge on the base fine, and the \$4 EMAT penalty assessment per offense.</li> </ol> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>"Total Bail" Without Traffic School or Proof</p> <p>VC 21453(b) = \$ 35</p> <p>VC 27360.5(a) = \$ 100</p> <p>VC 24252(a), VC 26707 = \$ 50</p> <p>Total base fine = \$ 185</p> <p>Penalties and surcharge = \$ 604</p> <p>TOTAL BAIL = \$ 789</p> <p>Court operations = \$ 160</p> <p>Conviction assessment = \$ 140</p> <p><b>TOTAL \$1,089</b></p> </td> <td style="width: 50%; vertical-align: top;"> <p>Traffic Violator School and Correction Total With Proof</p> <p>(VC 21453(b)) (\$ 0)</p> <p>(VC 27360.5(a)) (\$490)</p> <p>TVS fee \$ 49</p> <p>TVS/DMV admin. fee \$ 3</p> <p>Correction fee (2 X \$25) \$ 50</p> <p>Court operations (1 X \$40) \$ 40</p> <p>(TAP fee; VC 11205.2) (\$ )</p> <p>Conviction assessment \$ 35</p> <p><b>TOTAL \$ 667</b></p> </td> </tr> </table> <ol style="list-style-type: none"> <li>If the defendant is ordered to attend traffic violator school under VC 41501 for VC 21453(b) and VC 27360.5(a), per VC 42007 the defendant is charged for the greater/more severe of the qualifying offenses: VC 27360.5(a) at \$490 plus the \$49 and \$3 DMV TVS fee per VC 42007.1 (total of \$542).</li> <li>The charges of VC 21453(b) and VC 27360.5(a) are continued under VC 41501. The charges of VC 24252(a) and VC 26707 are continued pending proof of correction, required under VC 40522 for dismissal.</li> <li>The defendant presents to the court timely evidence that he or she has completed traffic violator school. The VC 21453(b) and VC 27360.5(a) violations are reported under VC 41501. If the defendant submits to the court timely evidence under VC 40616 that the violations of VC 24252(a) and VC 26707 have been corrected, the VC 24252(a) and VC 26707 violations are dismissed under VC 40522, and a \$50 "transaction fee" is charged under VC 40611. A court operations assessment of \$40 is collected and distributed as required by Penal Code section 1465.8 for reporting of VC 21453(b) for completion of traffic violator school, and a criminal conviction assessment of \$35 is collected under Government Code section 70373 for VC 21453(b).</li> <li>The case is closed, with the court collecting \$667 (\$490 + \$49 + 3 + \$50 + \$40 + \$35) plus any fee under VC 11205.2 and deduction of \$1 if the court does not impose a night or weekend court assessment under VC 42006.</li> </ol> <p><b>FAQ's from 2013 Revenue Training materials:</b>  The \$4 charge for Emergency Medical Air Transportation (EMAT) under Government Code (GC) section 76000.10(c)(1) is a penalty assessment that is collected as part of the Traffic Violator School (TVS) fee for one offense that receives a confidential conviction for completion of TVS under Vehicle Code section 42007. The administrative assessments for court operations and criminal conviction are fees that must be imposed for each offense that is resolved by completion of TVS. Penal</p>	<p>"Total Bail" Without Traffic School or Proof</p> <p>VC 21453(b) = \$ 35</p> <p>VC 27360.5(a) = \$ 100</p> <p>VC 24252(a), VC 26707 = \$ 50</p> <p>Total base fine = \$ 185</p> <p>Penalties and surcharge = \$ 604</p> <p>TOTAL BAIL = \$ 789</p> <p>Court operations = \$ 160</p> <p>Conviction assessment = \$ 140</p> <p><b>TOTAL \$1,089</b></p>	<p>Traffic Violator School and Correction Total With Proof</p> <p>(VC 21453(b)) (\$ 0)</p> <p>(VC 27360.5(a)) (\$490)</p> <p>TVS fee \$ 49</p> <p>TVS/DMV admin. fee \$ 3</p> <p>Correction fee (2 X \$25) \$ 50</p> <p>Court operations (1 X \$40) \$ 40</p> <p>(TAP fee; VC 11205.2) (\$ )</p> <p>Conviction assessment \$ 35</p> <p><b>TOTAL \$ 667</b></p>	
<p>"Total Bail" Without Traffic School or Proof</p> <p>VC 21453(b) = \$ 35</p> <p>VC 27360.5(a) = \$ 100</p> <p>VC 24252(a), VC 26707 = \$ 50</p> <p>Total base fine = \$ 185</p> <p>Penalties and surcharge = \$ 604</p> <p>TOTAL BAIL = \$ 789</p> <p>Court operations = \$ 160</p> <p>Conviction assessment = \$ 140</p> <p><b>TOTAL \$1,089</b></p>	<p>Traffic Violator School and Correction Total With Proof</p> <p>(VC 21453(b)) (\$ 0)</p> <p>(VC 27360.5(a)) (\$490)</p> <p>TVS fee \$ 49</p> <p>TVS/DMV admin. fee \$ 3</p> <p>Correction fee (2 X \$25) \$ 50</p> <p>Court operations (1 X \$40) \$ 40</p> <p>(TAP fee; VC 11205.2) (\$ )</p> <p>Conviction assessment \$ 35</p> <p><b>TOTAL \$ 667</b></p>					

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**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment	Committee Response
			<p>Code section 1465.8(a)(2) and GC section 70373 expressly provide that the assessments are imposed for each “conviction” including the dismissal of a traffic violation for attendance of TVS.</p> <p><b>Court Operations Fee:</b>  <b>PC1465.8(a)(2)</b> For the purposes of this section, “conviction” includes the dismissal of a traffic violation on the condition that the defendant attend a court-ordered traffic violator school, as authorized by Sections 41501 and 42005 of the Vehicle Code. This court operations assessment shall be deposited in accordance with subdivision (d), and may not be included with the fee calculated and distributed pursuant to Section 42007 of the Vehicle Code.</p> <p><b>Conviction Assessment:</b>  <b>GC70373(2)</b> For the purposes of this section, “conviction” includes the dismissal of a traffic violation on the condition that the defendant attend a court-ordered traffic violator school, as authorized by Sections 41501 and 42005 of the Vehicle Code. This assessment shall be deposited in accordance with subdivision (d), and may not be included with the fee calculated and distributed pursuant to Section 42007 of the Vehicle Code.</p>	
3.	Superior Court of California, County of Humboldt By: Kelly Nyberg Operations Manager	N/I	<p>Please see questions below related to the Uniform Bail Schedule for 2016.</p> <p>VC4456(a) - This only shows a POC option; should there be a fine row?</p> <p>VC4456(b)(1) - This only shows a POC option; should there</p>	See responses to Comment #1.



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**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment			Committee Response
			<p>be a fine row?</p> <p>VC23123.5(a) - This violation is referenced in the Invitation to Comment but does not appear to be any changes in the Bail Schedule when compared to the 2016 Bail Schedule. Assembly Bill 1785 appears to change the language of this violation, but does not actually change anything in the Bail Schedule description or the fine amount. Can you please confirm this?</p> <p>VC24612(c) - This only shows a POC option; should there be a fine row?</p> <p>VC25300(d)(2) - This only shows a POC option; should there be a fine row?</p> <p>VC22513.1(e) - This violation is referenced in the Invitation to Comment but is not in the actual Bail Schedule. Assembly Bill 2167 which added this Subsection (e) is the punishment section, not the actual violation.</p>			
4.	<p>Superior Court of California, County of Orange By: Anita Verplank Program Coordinator Specialist</p>	N/I	<p>In response to the Invitations to Comment on the 2017 Judicial Council Uniform Bail Schedule here is our comment requesting a correction.</p> <p>Preface Section IV.H., page Vii. Uniform Public Utilities Bail &amp; PA schedule example should equal \$843 not \$839.</p>			<p>The committee agrees and will make the change.</p>
5.	<p>Superior Court of California, County of San Diego By: Mike Roddy Executive Officer</p>	AM	Pg. 18	VC 5011(a)	Should not have a subsection.	<p>The committee agrees and will delete the subdivision reference. There are no subdivisions in this section.</p>

**SP16-12**

**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment		Committee Response	
			Pg. 19	VC 9400(a-c,f)	Listed as correctable (?)	This entry concerns weight fees for commercial motor vehicles. The comment suggests that the schedule should not list the violation as a correctable offense. The committee declines this suggestion because the violations are correctable.
			Pg. 21	VC 12814.6(b)(1, 2)	Listed as correctable (?)	This entry concerns prohibitions for 16-18 year olds driving with a provisional license. The comment suggests that the schedule should not list the violation as a correctable offense. The bail schedule contains separate entries for subdivisions (b)(1) and (b)(2). The entry for (b)(1) is listed as correctable in the schedule. The committee agrees that it is not correctable and will delete the correctable line in the schedule. However, the entry for (b)(2) is also listed as correctable in the schedule. The committee declines this suggestion because this subdivision contains correctable offenses.
			Pg. 22	VC 14603	Listed as correctable (?)	This entry concerns violations of restricted licenses. The comment suggests that the schedule should not list the violation as a correctable offense. The committee declines this suggestion because some of the violations are correctable.

**SP16-12**

**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment			Committee Response
			Pg. 28	VC 22354	Should include (a) subsection	The committee agrees with this suggestion and will add an (a) subdivision.
			Pg. 38	VC 26456	Listed as correctable (?)	This entry concerns requirements for brake stopping tests. This is not a chargeable offense. The committee will delete this entry from the schedule.
			Pg. 40	VC 27001(a)	Listed as correctable (?)	This entry concerns prohibitions on the use of horns. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 40	VC 27002	Listed as correctable (?)	This entry concerns prohibitions on the existence and use of sirens in motor vehicles. The comment suggests that the schedule should not list the violation as a correctable offense. The committee declines this suggestion because it contains a correctable offense.
			Pg. 40	VC 27003	Listed as correctable (?)	This entry concerns prohibitions on the use of sirens on armored cars. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 40	VC 27007	Listed as correctable (?)	This entry concerns the use of sound amplification systems. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and

**SP16-12**

**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment			Committee Response
						will delete the correctable line from the schedule.
			Pg. 40	VC 27150.1	Listed as correctable (?)	This entry concerns prohibitions on the sale of exhaust systems. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 41	VC 27315(d,e)	Listed as correctable (?)	This entry concerns mandatory use of seatbelts. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 41	VC 27360(a)	Listed as correctable (?)	This entry concerns the appropriate use of child passenger restraint systems for children under 8. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 41	VC 27360.5(a)	Listed as correctable (?)	This entry concerns the appropriate use of child passenger restraint systems or safety belts for children 8 – 16. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.

**SP16-12**

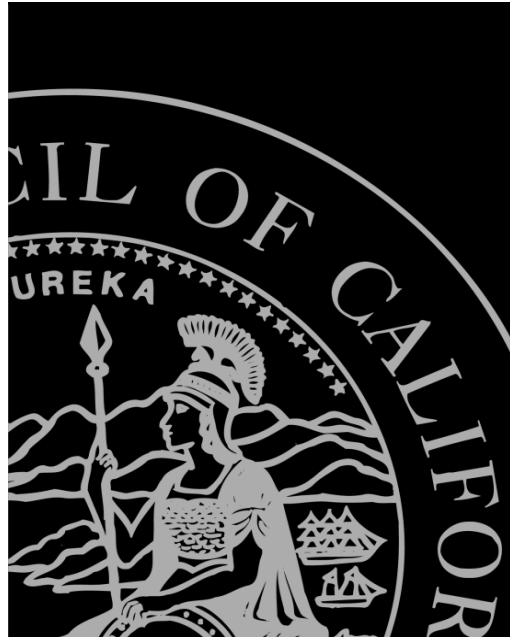
**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment			Committee Response
			Pg. 41	VC 27363(b)	Listed as correctable (?)	This entry concerns the use of a seatbelt for children in cases of life threatening emergencies. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 41	VC 27363(f)	Listed as correctable (?)	This entry concerns prohibitions on the use of rear-facing child passenger restraint systems in the front seat of vehicles equipped with frontal passenger airbags. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 42	VC 27400	Listed as correctable (?)	This entry concerns limitations on the use of headsets, earplugs or earphones while driving or biking. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line from the schedule.
			Pg. 42	VC 27500(a)	Not a chargeable offense.	This entry concerns pneumatic tire standard regulations. The comment states that this is not a chargeable offense. The committee agrees and will remove it from the schedule.
			Pg. 44	VC 27906	Should include subsections (a) and (c).	This entry concerns signage requirements for school busses. The comment suggests adding (a) and (c) subdivisions. The committee agrees and will add those subdivisions to the entry.

**SP16-12**

**Uniform Bail and Penalty Schedules: Uniform Bail and Penalty Schedules, 2017 Edition**

	Commentator	Position	Comment			Committee Response
						<p>This entry concerns adjustments to odometers after service or repair. The comment suggests that the schedule should not list the violation as a correctable offense. The committee declines this suggestion because it is a correctable offense.</p> <p>The comment states that this section has been repealed. The committee agrees and will delete it from the list.</p> <p>This entry concerns the containment of tools in farm labor vehicles. The comment suggests that the schedule should not list the violation as a correctable offense. The committee agrees and will delete the correctable line.</p> <p>This entry concerns cargo securement standards. The comment suggests that the schedule should not list the violation as a correctable offense. The committee will delete the entry because it does not include a chargeable offense.</p> <p>This entry concerns prohibitions for sirens on off-highway motor vehicles. The comment states that this entry should be 38375(a). The committee agrees and will make the change.</p>
Pg. 44	VC 28053(b)	Listed as correctable (?)	Pg. 45	VC 29200(c)	Repealed in 2007	
Pg. 45	VC 31407	Listed as correctable (?)	Pg. 46	VC 34500.3	Listed as correctable (?)	
Pg. 48	VC 38374(a)	Typo – Should be VC 38375(a)				



# Uniform Bail and Penalty Schedules

~~2016~~ 2017 EDITION

1461

(Cal. Rules of Court, rule 4.102)

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TRAFFIC

BOATING

FORESTRY

FISH AND GAME

PUBLIC UTILITIES

PARKS AND RECREATION

BUSINESS LICENSING



JUDICIAL COUNCIL  
OF CALIFORNIA

**JUDICIAL COUNCIL OF CALIFORNIA**  
**455 Golden Gate Avenue**  
**San Francisco, California 94102-3688**

**Rule 4.102. UNIFORM BAIL AND PENALTY SCHEDULES**

**TRAFFIC, BOATING, FORESTRY, FISH AND GAME,  
PUBLIC UTILITIES, PARKS AND RECREATION, BUSINESS LICENSING**

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and such forfeiture may be ordered without the necessity of any further court proceedings and treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.



The purpose of this uniform bail and penalty schedule is to:

1. Show the standard amount for bail, which for Vehicle Code offenses may also be the amount utilized for a bail forfeiture instead of further proceedings; and
2. Serve as a guideline for the imposition of a fine as all or a portion of the penalty for a first conviction of a listed offense where a fine is used as all or a portion of the penalty for such offense. The amounts shown for the misdemeanors on the boating, fish and game, forestry, public utilities, parks and recreation, and business licensing bail and penalty schedules have been set with this dual purpose in mind.

Unless otherwise shown, the maximum penalties for the listed offenses are six months in the county jail or a fine of \$1,000, or both. The penalty amounts are intended to be used to provide standard fine amounts for a first offense conviction of a violation shown where a fine is used as all or a portion of the sentence imposed.

The bail amounts in the Uniform Bail and Penalty Schedules are calculated by using the maximum county and emergency medical services penalty amount authorized by Government Code sections 76000 and 76000.5. When a court adopts a countywide bail schedule under Penal Code section 1269b for infraction offenses, the local schedule should be adjusted to reflect the specific penalty assessments that apply to a particular county under Government Code sections 76000 and 76000.5. If a court does not have night or weekend sessions for traffic cases, the countywide bail schedule should omit the \$1 fee under Vehicle Code section 42006. The Safety Enhancement–Double Fine Zone schedule applies only to specific counties as expressly authorized by statute.

Note: Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:

Judicial Council of California  
Criminal Justice Services  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
~~Ph: 415-865-7611~~  
E-mail: [TrafficAC@jud.ca.gov](mailto:TrafficAC@jud.ca.gov)  
[www.courts.ca.gov/7532.htm](http://www.courts.ca.gov/7532.htm)

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## PREFACE

### ***I. Section and Offense***

- A. Historically, only those offenses most often filed in municipal courts were included in the Uniform Bail and Penalty Schedules. Penal Code section 1269b and Vehicle Code section 40310 require the Judicial Council to establish a schedule for infractions of the Vehicle Code. The Judicial Council approved the first Traffic Infraction Bail and Penalty Schedule in November 1992.
- B. The letter “M” designates a misdemeanor: a crime punishable, at the discretion of the court, by imprisonment in a county jail for a period of no longer than 6 months or by a fine not exceeding \$1,000 or by both (Penal Code section 19).
- C. The letter “I” designates an infraction: a violation of a law not punishable by imprisonment but by a fine generally not exceeding \$100 for violations of the Vehicle Code (Vehicle Code section 42001) or \$250 for violations of other codes (Penal Code section 19.8(b) (~~Sen. Bill 1461; Stats. 2014, ch. 54~~)).

### ***II. Base Bail***

The “Base Bail” indicated is the amount from which the “additional penalties” required by Penal Code section 1464; Government Code sections 70372, 76000, 76104.6, and 76104.7; the surcharge required by Penal Code section 1465.7; and the penalty authorized by Government Code section 76000.5 are calculated.

### ***III. Additional Penalties and Surcharge***

- A. An “additional penalty” of between \$22 and \$27 (\$10 state penalty required by Penal Code section 1464; state court construction penalty of \$5 required by Government Code section 70372(a); a county and state DNA Identification Fund penalty of \$5 required by Government Code sections 76104.6 and 76104.7 (amended effective June 27, 2012); and a county penalty of up to \$7 required by Government Code section 76000(e)) shall be levied upon every \$10, or part of \$10, of every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses. The “additional penalty” may increase by \$2 for every \$10, or part of \$10, of the base fine if the county board of supervisors elects to levy an emergency medical services (EMS) penalty assessment under Government Code section 76000.5.

- B. Government Code section 70372(a) requires imposition of a state court construction penalty on every fine, penalty, or forfeiture collected by the courts for criminal offenses, including, but not limited to, all offenses, except parking offenses, as defined in Penal Code section 1463, involving violations of the Fish and Game Code and Vehicle Code or local ordinances adopted pursuant to the Vehicle Code. Section 70372 specifies a state court construction penalty of \$5 for every \$10, or part of \$10, of the criminal fine, penalty, or forfeiture.
- C. Penal Code section 1464(b) provides that in the case of multiple offenses, the amount of “additional penalties” is to be determined by the total base bail or fine for all the offenses cited, and if the fine or base bail is suspended in whole or part, the “additional penalties” shall be reduced in proportion to the amount of suspension.
- D. Penal Code section 1465.7(a) requires imposition on criminal offenses of a state surcharge equal to 20 percent of the base fine used to calculate the state penalty assessment as specified in Penal Code section 1464(a). Penal Code section 1465.7(b) requires that the surcharge be imposed in addition to the state penalty assessment pursuant to Penal Code section 1464 and not be included in the base fine used to calculate the state penalty assessment as specified in section 1464. For the limited purpose of calculating the fee to attend traffic violator school under Vehicle Code section 42007, Penal Code section 1465.7(g) provides that the surcharge is excluded from the “Total Bail” amount used to determine the fee but is collected and distributed according to section 1465.7. The surcharge is part of the “Total Bail” in other circumstances, such as when a defendant requests a trial by written declaration or when a court permits payment of the “Total Bail” in installments.
- E. In counties with bonded indebtedness for court facilities, the county penalty assessment amount under Government Code section 76000(e) is \$7 for every \$10 or part of \$10 of the base fine. In counties without bonded indebtedness for court facilities, if the county penalty assessment amount listed in Government Code section 76000(e) is less than \$7, the penalty for every \$10, or part of \$10, of the base fine is equal to the amount listed in Government Code section 76000(e) plus the amount obtained from multiplying the difference between \$7 and the amount listed in Government Code section 76000(e) by the ratio of the square footage of court facilities transferred from the county to the state to the total court facility square footage in the county.
- F. Under Government Code section 76000.10(c)(1), a penalty of \$4 for emergency medical air transportation (EMAT) services is imposed for every conviction of a violation of the Vehicle Code, or a local ordinance adopted under the Vehicle Code, committed on or after January 1, 2011. The penalty is due to end on January 1, 2018. (Sen. Bill 326; Stats. 2015, ch. 797.)

#### **IV. Total Bail**

- A. Effective January 1, 1989, the Judicial Council adopted a “Total Bail” concept in an effort to obtain statewide consistency in the “bail” policies of the courts. The indicated “Total Bail” is for the first offense, and it must be followed to the extent required by Penal Code section 1269b.
- B. Except as otherwise required by statute, under Penal Code sections 1203, 1203.1, and 1203b, trial courts have discretion to suspend the minimum sentence, including fines and penalties. For traffic cases, Vehicle Code section 42003 permits

a judge or referee to consider a defendant's ability to pay. Vehicle Code section 42007 permits a judicial officer to reduce the fee to attend traffic violator school upon a showing that the defendant is unable to pay the full amount. Vehicle Code sections 42003 and 40510.5 permit installment payments of judgments in traffic cases, and Vehicle Code section 42007 permits installment payments of the fee to attend traffic violator school.

- C. Except for the following exceptions, counties must adhere to the Judicial Council's Traffic Infraction Bail and Penalty Schedule for infraction violations of the Vehicle Code (Penal Code section 1269b and Vehicle Code section 40310).

Penal Code section 1463.28 provides that 30 counties may exceed the "Total Bail" amounts of the Traffic Infraction Bail and Penalty Schedule. Those counties are

- |                 |                 |                 |
|-----------------|-----------------|-----------------|
| 1. Alpine       | 11. Lassen      | 21. San Joaquin |
| 2. Amador       | 12. Los Angeles | 22. Santa Clara |
| 3. Butte        | 13. Madera      | 23. Sierra      |
| 4. Calaveras    | 14. Mariposa    | 24. Stanislaus  |
| 5. Contra Costa | 15. Mendocino   | 25. Sutter      |
| 6. Del Norte    | 16. Modoc       | 26. Trinity     |
| 7. Fresno       | 17. Mono        | 27. Tulare      |
| 8. Humboldt     | 18. Plumas      | 28. Tuolumne    |
| 9. Kings        | 19. San Benito  | 29. Yolo        |
| 10. Lake        | 20. San Diego   | 30. Yuba        |

Additional exceptions result from two pieces of legislation that became operative on January 1, 1994:

1. Vehicle Code section 42001 allows local public entities that employ peace officers, universities, and state colleges to set a fine schedule for bicycle violations occurring in their jurisdictions that would supersede the Judicial Council penalty schedule.
2. Vehicle Code section 42009 requires that for any specified offense committed within a highway construction or maintenance area during hours when work is being performed, the fine shall be double in the case of misdemeanors and in the case of infractions shall be one category higher than otherwise provided in the Traffic Infraction Fixed Penalty Schedule. An appendix with the specified offenses listed and the enhanced amounts follows the Traffic portion of the bail and penalty schedules, starting on page 102.
3. Streets and Highways Code section 97 provides for increased fines for a safety enhancement—double fine zone on the segment of Route 12 between the Route 80 junction in Solano County and the Route 5 junction in San Joaquin County.

Streets and Highways Code section 97.4 provides for increased fines for a safety enhancement–double fine zone on Vasco Road, between the State Highway Route 580 junction in Alameda County and the Walnut Boulevard intersection in Contra Costa County upon approval of resolutions of the Alameda County and Contra Costa County boards of supervisors. (Assem. Bill 348; Stats. 2011, ch. 290.) Under section 97, the base fine for any specified offense committed in the safety enhancement–double fine zone shall be double in the case of misdemeanors and in the case of infractions shall be one category higher than otherwise provided in the Uniform Bail and Penalty Schedules. Any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine.

The “Categories” indicated in the Traffic Infraction Bail and Penalty Schedule under Vehicle Code sections 40310, 42009(a), and 42010 will be shown as “1a” and “1b,” “2a” and “2b,” “3a” and “3b,” and “4a” and “4b,” with the “b” subcategory referring to the violation when it is committed in a highway construction zone or safety enhancement–double fine zone.

- D. The “Total Bail” amounts within the Uniform Boating, Forestry, Fish and Game, Public Utilities, Parks and Recreation, and Business Licensing Bail Schedules are suggested amounts, and their adoption by courts is not compulsory.
- E. The “Total Bail” amount indicated includes the base bail and those “additional penalties” required by Penal Code section 1464 and Government Code sections 70372, 76000, 76104.6, and 76104.7, and the 20 percent surcharge on the base bail required by Penal Code section 1465.7, except as provided in Vehicle Code section 42007. When authorized by the county board of supervisors, the “Total Bail” for a countywide bail schedule adopted under Penal Code section 1269b may also include an additional \$2 penalty under Government Code section 76000.5 for every \$10, or part of \$10, of the base fine. Assessments adopted by a court—such as under Vehicle Code section 40508.6—shall be collected in addition to the “Total Bail.” The court operations assessment imposed per convicted offense under Penal Code section 1465.8; assessment for night court under Vehicle Code section 42006; traffic assistance program (TAP) fee under Vehicle Code section 11205.2; and criminal conviction assessment under Government Code section 70373 are collected as part of the “Total Bail,” but are not subject to the special distribution for the “Total Bail” in traffic violator school cases under Vehicle Code section 42007. For every conviction of a violation of the Vehicle Code, or ordinance adopted under the Vehicle Code, committed on or after January 1, 2011, a \$4 EMAT penalty is imposed under Government Code section 76000.10(c)(1) as part of the “Total Bail.” Effective January 1, 2014, Penal Code section 1202.4(b)(1) requires a minimum \$150 restitution fine as an assessment in addition to the “Total Bail” in every case where there is a misdemeanor conviction. Other mandatory assessments may also be applicable, especially in DUI cases.

Fish and Game Code section 12021 authorized a \$15 penalty to be collected in addition to the fine and penalties normally collected for violations of the Fish and Game Code, to be deposited in the Fish and Game Preservation Fund and disbursed as specified. The \$15 additional penalty does not apply to violations punishable pursuant to Fish and Game Code section 12002.1(b) or 12002.2(b) or to any regulation relating to the wearing or display of a fishing license.

- F. “Total Bail” shall not exceed statutory limits. Vehicle Code section 40310 specifies that the “fine” amount of the total bail shall not exceed the limitations specified by Vehicle Code sections 42001 and 42001.5.
- G. Rule 4.105 of the California Rules of Court provides that with certain exceptions deposit of bail is not required to appear for arraignment or trial for an infraction case. Deposit may be required: by statute, such as trial by written declaration; if a person does not sign a promise to appear as ordered by the court; or a judicial officer states a reason for a deposit to schedule a trial.

In cases where a court appearance is required by a court, the amounts set forth in the Uniform Bail and Penalty Schedules do not necessarily indicate the appropriate total penalties; rather, they ensure that, in most cases, when bail is posted, sufficient funds will be available to meet the defendant’s obligations. Upon conviction, however, “additional penalties” are added to any fine. It is incumbent upon the judge who hears each case to determine the proper total penalty (fine and “additional penalties”) based on the particular facts presented.

With the exception of juveniles under age 18, there shall be no mandatory court appearance for any infraction of the California Vehicle Code punishable by fine only. A court may require a mandatory appearance for an infraction violation of the Vehicle Code when a statutory driver’s license restriction, suspension, or revocation is authorized; community service or proof of payment or correction is mandatory; or a violation requires specific action under the Vehicle Code in addition to a fine. This paragraph does not apply to violations of local ordinances based on Vehicle Code sections.

- H. The “Total Bail” for an offense *not specifically listed* in the Uniform Traffic Infraction Bail and Penalty Schedule is the amount set for the general category of that offense unless a California code or regulation specifies otherwise. The court operations assessment and criminal conviction assessment are collected in addition to the “Total Bail.” The suggested minimum “Total Bail” for an offense *not specifically listed* in the Uniform Traffic Misdemeanor Bail and Penalty Schedule, unless a California code or regulation specifies otherwise, is:

	Base	+	Additional Penalties*&	Surcharge	+	Fees	=	Total Bail*/Fees (*See sections II–IV)
Misdemeanor	\$ 75	+	\$251		+	\$70	=	\$396
Infraction	\$ 35	+	\$127		+	\$75	=	\$237

The suggested minimum “Total Bail” for an offense *not specifically listed* in the Uniform Public Utilities Bail and Penalty Schedule, unless a California code or regulation specifies otherwise, is:

Misdemeanor	\$185	+	\$588		+	\$70	=	<u>\$843</u>
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The suggested minimum “Total Bail” for an offense *not specifically listed* in the Uniform Boating, Business Licensing, Fish and Game, Forestry, or Parks and Recreation Bail and Penalty Schedules, unless a California code or regulation specifies otherwise, is:

Misdemeanor	\$100	+	\$310		+	\$70	=	\$480
Infraction	\$ 35	+	\$123		+	\$75	=	\$233



## V. **Bail Categories**

Assembly Bill 1344 (Stats. 1992, ch. 696), effective September 15, 1992, amended Vehicle Code section 40310 to classify Vehicle Code offenses into four or fewer penalty categories, according to the severity of the offenses. The Judicial Council has approved the following categories of bail/fine after considering suggestions from its Traffic Advisory Committee and the recommendations made by the National Center for State Courts:

		Base Fine +	Additional Penalties*	Sur- & charge	+Fees =	Total(*See secs. II–IV) Bail* /Fees
Category 1	Bicyclist, motorized scooter, pedestrian, pocket bike, vehicle registration and equipment offenses	\$ 25 +	\$96		+ \$75 =	\$196
Category 2	Driver’s license, operation of vehicle, and size and load offenses	\$ 35 +	\$127		+ \$75 =	\$237
Category 3	Substance abuse infractions, VC 2818, VC 20004, VC 21706.5, and VC 27375	\$ 70 +	\$221		+ \$75 =	\$366
Category 4	Miscellaneous offenses for which the penalties or the fee for dismissal with proof of correction are specifically set by the Vehicle Code, speeding offenses (refer to Speed Chart), and infractions pursuant to PC 19.8					

If a citation does not indicate that an offense is eligible for correction under Vehicle Code 40522, a court may presume that the offense is cited as noncorrectable. (See also *California Highway Patrol v. Superior Court* (2008) 158 Cal.App.4th 726, 740.) Vehicle Code section 14610.5(a) may be charged as either an infraction or a misdemeanor (Vehicle Code section 14610.5(b)). Penal Code section 19.8 lists the following offenses that are an infraction with a fine of up to \$250: Vehicle Code sections 5201.1, 12500(a), 14601.1, 23109(c), 27150.1, 40508, and 42005. If one of these offenses is charged as an infraction, the appropriate penalty is listed in the Traffic Infraction Bail and Penalty Schedule. If the offense is charged as a misdemeanor, the recommended penalty is listed in the Traffic Misdemeanor Bail and Penalty Schedule.

## VI. **Point Count**

Vehicle Code sections 12810, 12810.2, 12810.3, and 12810.4 determine the amount of point count. The Department of Motor Vehicles establishes conviction point count based on statutory guidance and definition. Vehicle Code section 12810.5 defines a “negligent operator” based on point count. The Department of Motor Vehicles may take an administrative sanction against a person’s driving privilege based on “points” (Vehicle Code section 12810.5).

## VII. **Prior Convictions**

- A. The base fine for one Vehicle Code moving violation that is assessed “points” on a current arrest or citation shall be enhanced by \$10 for each “prior” conviction within 36 months of the new alleged offense. For calculating the enhancement, both the current and “prior” offense must be a moving violation for which a “point” has been assigned per Vehicle Code section 12810 or 12810.2. A confidential conviction after completion of traffic violator school is not assigned a point or counted as a prior offense for purposes of enhancing the fine of a subsequent offense. Regardless of the number of moving violation convictions on a citation, only one “prior” per citation shall be counted in determining the enhancement on the current offense.

While Vehicle Code section 42001 references maximum fines within a one-year time frame, the Judicial Council has interpreted section 42001 to not preclude a court from considering “prior” convictions for a longer period of time. The period of 36 months was adopted by the Judicial Council (effective January 1, 1989) to correspond to and reinforce Vehicle Code sections 12810 and 12810.5. These sections define the “point system” used by the Department of Motor Vehicles as prima facie evidence of the negligent operation of a motor vehicle.

Vehicle Code sections 15306 and 15308 specify penalties for commercial drivers in terms of subsequent offenses occurring within three years.

- B. In the case of an owner responsibility citation, the “prior” must relate to the particular vehicle for which the new offense is charged.
- C. Vehicle Code section 42004 provides that the court, in determining a penalty to be imposed pursuant to the Vehicle Code, may use a written report from the Department of Motor Vehicles that contains information showing prior convictions.
- D. With the exception of parking, pedestrian, and bicycle offenses on a current citation, Vehicle Code section 40508.6 authorizes courts to establish an administrative assessment, not to exceed \$10, for the purpose of recording and maintaining a record of a defendant’s prior convictions, that is payable at the time of payment of a fine or when bail is forfeited for any subsequent violation.

#### **VIII. Traffic Violator School**

- A. Vehicle Code section 42007 provides that:
  - 1. The court shall collect a fee from every person ordered or permitted to attend traffic violator school in an amount equal to the total bail set forth for the eligible offense in the uniform countywide bail schedule;
  - 2. Where multiple offenses are charged on a single notice to appear, the “total bail” amount collected is the amount applicable to the greater of the eligible offenses; and
  - 3. The court may set a lesser fee upon a showing that the defendant is unable to pay the full amount.
- B. Vehicle Code section 40512.6 provides that the fee may be converted to bail and forfeited if the defendant fails to submit proof of school completion within the time ordered by the court.
- C. Vehicle Code section 42007.1(a) provides that a \$49 fee, a fee for monitoring traffic violator schools, and a TAP fee under Vehicle Code section 11205.2(c) are to be added to the “total bail” of the offense eligible for traffic violator school.
- D. Vehicle Code section 42005 prohibits drivers of commercial vehicles from eligibility for traffic violator school. Drivers

with a Class A, Class B, or commercial Class C driver’s license may attend traffic violator school to avoid points for traffic violations in a vehicle that requires only a class M or noncommercial class C license. Vehicle Code section 42005(d) excludes violations of Vehicle Code sections 20001, 20002, 23103, 23104, 23105, 23140, 23152, 23153, or 23103, as specified in section 23103.5, from eligibility for traffic violator school for pretrial diversion, a confidential conviction, or to avoid points.

**Sample Calculation of Bail, Traffic Violator School Fee, and Court Operations Assessment for Multiple Offenses**

1. Violation of Vehicle Code sections 21453(b), 27360.5(a), 24252(a), and 26707.
2. No prior convictions are charged.
3. “Additional penalties” of between \$22 and \$29 as set out in section III for every \$10 of base fine or part thereof, plus the surcharge on the base fine, and the \$4 EMAT penalty assessment per offense:

“Total Bail” Without Traffic School or Proof		Traffic Violator School and Correction Total With Proof	
VC 21453(b)	= \$ 35	(VC 21453(b))	(\$ 0)
VC 27360.5(a)	= \$ 100	(VC 27360.5(a))	(\$490)
VC 24252(a), VC 26707	= \$ 50	TVS fee	\$ 49
Total base fine	= \$ 185	TVS/DMV admin. fee	\$ 3
Penalties and surcharge	= \$ 604	Correction fee (2 X \$25)	\$ 50
TOTAL BAIL	= \$ 789	Court operations (2 X \$40)	\$ <u>80</u>
Court operations	= \$ 160	(TAP fee; VC 11205.2)	(\$ )
Conviction assessment	= \$ <u>140</u>	Conviction assessment (2 X \$35)	\$ <u>70</u>
TOTAL	\$1,089	TOTAL	\$ <u>742</u>

4. If the defendant is ordered to attend traffic violator school under VC 41501 for VC 21453(b) and VC 27360.5(a), per VC 42007 the defendant is charged for the greater/more severe of the qualifying offenses: VC 27360.5(a) at \$490 plus the \$49 and \$3 DMV TVS fee per VC 42007.1 (total of \$542).
5. The charges of VC 21453(b) and VC 27360.5(a) are continued under VC 41501. The charges of VC 24252(a) and VC 26707 are continued pending proof of correction, required under VC 40522 for dismissal.
6. The defendant presents to the court timely evidence that he or she has completed traffic violator school. The VC 21453(b) and VC 27360.5(a) violations are reported under VC 41501. If the defendant submits to the court timely evidence under VC 40616 that the violations of VC 24252(a) and VC 26707 have been corrected, the VC 24252(a) and VC 26707 violations are dismissed under VC 40522, and a \$50 “transaction fee” is charged under VC 40611. A court operations assessment of \$40 is collected and distributed as required by Penal Code section 1465.8 for reporting of VC 21453(b) for completion of traffic violator school, and a criminal conviction assessment of \$35 is collected under Government Code section 70373 for VC 21453(b).
7. The case is closed, with the court collecting \$667 (\$490 + \$49 + 3 + \$50 + \$40 + \$35) plus any fee under VC 11205.2 and deduction of \$1 if the court does not impose a night or weekend court assessment under VC 42006.

**IX. Late Charge**

Vehicle Code section 40310 requires the imposition of a late charge of 50 percent on any traffic penalties not paid within 20 days.

The 20 days shall be counted from the mailing of a notice that the penalty has been assessed. The initial penalty consists of the base fine; a fine enhancement for prior convictions (if any); the state, county, and court facility construction additional penalties; the \$4 emergency medical air transportation penalty; and the emergency medical services penalty, if authorized (Penal Code section 1464 and Government Code sections 70372, 76000, 76000.5, 76000.10(c)(1), 76104.6, and 76104.7).

**Sample Calculation of Late Penalty**

1. Base fine	\$ 25
2. Enhancement for one prior conviction	+ 10
Enhanced base fine	\$ 35
3. Additional penalties (PC 1464 and GC 70372, 76000, 76000.5, 76104.6, and 76104.7) (\$29* X 4) (*See section III)	+ 116
4. EMAT penalty for conviction of Vehicle Code violation (GC 76000.10(c)(1))	+ 4
Initial Penalty	\$ 155
5. Night court assessment (VC 42006)	+ 1
6. Administrative assessment for maintaining a record of priors (VC 40508.6)	+ 10
7. Surcharge on base fine (PC 1465.7)	+ 7
8. Court operations assessment (PC 1465.8)	+ 40
9. Conviction assessment (GC 70373(a)(1))	+ 35
Total Due	\$ 248
10. Late charge (VC 40310) [50% of initial penalty]	+ 77.50
Total Due	\$ 325.50

**X. Offenses Eligible for Correction**

Under Vehicle Code section 40522, an officer arresting for violations specified in Vehicle Code section 40303.5 is required to specify the offense charged and note in a form approved by the Judicial Council that the charge shall be dismissed upon proof of correction. Certain offenses specified in Vehicle Code section 40303.5 are designated in the following schedule as potentially eligible for correction. The offenses designated in the schedule as potentially eligible for correction and those offenses specified by Vehicle Code section 40303.5 that are not contained in the schedule may be eligible for dismissal with proof of correction if the citing officer determines that none of the disqualifying conditions of Vehicle Code section 40610(b) exist. (See *California Highway Patrol v. Superior Court* (2008) 158 Cal.App.4th 726 [riding a motorcycle without wearing any helmet presents an “immediate safety hazard” when an officer makes that determination and issues a noncorrectable citation].) Those disqualifying conditions are present if an officer finds any of the following:

1. Evidence of fraud or persistent neglect;
2. The violation presents an immediate safety hazard;
3. The violator does not agree to, or cannot, promptly correct the violation.

If a citation does not indicate that an offense is eligible for correction, a court may presume that the offense is cited as noncorrectable. (See also *California Highway Patrol v. Superior Court, supra*, 158 Cal.App.4th at p. 740.) Upon proof of correction of an alleged violation of section 12500 or 12951 or any violation cited pursuant to section 40610, Vehicle Code section 40611 authorizes courts to collect a \$25 transaction fee for each violation. No bail amount shall be collected.

In cases alleging violation of Vehicle Code section 4000(a), or alleging that a vehicle is not registered as required by the Vehicle Code, Vehicle Code section 40152 requires that proof of registration or proof of payment of the appropriate registration fees, or proof that the vehicle has been reduced to junk, be produced in court before the offense can be adjudicated as a dismissal.

### ***XI. Evidence of Financial Responsibility***

Pursuant to Vehicle Code section 16028(e), upon submission of evidence of financial responsibility, in a form consistent with Vehicle Code section 16020, showing that the driver was in compliance with that section at the time the notice to appear for violating Vehicle Code section 16028 was issued, further proceedings for the violation shall be dismissed and no bail amount shall be collected. Vehicle Code section 40611 authorizes courts to collect a \$25 transaction fee for each violation that is dismissed pursuant to section 16028(e).

### ***XII. Parking Violations***

Assembly Bill 408 (Stats. 1992, ch. 1244), effective January 1, 1993, revised and recast the procedures for processing and adjudicating parking law violations as administrative offenses subject to a civil penalty. The bill required courts to transfer the processing of parking offenses to issuing agencies not later than January 1, 1994. Consequently, parking violations that cannot be cited as infractions have been removed from the Uniform Bail and Penalty Schedules. Vehicle Code section 463 defines “park” or “parking” as the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in the loading or unloading of merchandise or passengers. Under Vehicle Code section 40225(a), equipment violations entered on a notice of parking violation are subject to a civil penalty established according to Vehicle Code section 40225(c). The Traffic Infraction Fixed Penalty Schedule includes Vehicle Code sections that may be cited for a stopping violation on a notice to appear that is signed by the driver. Under Vehicle Code section 42001.13, a violation of disabled parking provisions in Vehicle Code section 22507.8 may be cited as an infraction on a notice to appear. Under Vehicle Code section 42001.5, a violation of Vehicle Code sections 22500(i), 22500(l), and 22522 may be cited as an infraction on a notice to appear. Under Vehicle Code section 42001.6, a violation of Vehicle Code section 22511.1 may be cited as an infraction on a notice to appear. Government Code section 70373 requires a conviction assessment of \$35, and Government Code section 70372(b) imposes an additional assessment of \$4.50 on each parking violation infraction conviction. Government Code section 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation committed on or after January 1, 2011.

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
28		<sup>1</sup> Failure to Give Notice of Vehicle Repossession	300	300	210.00	150	5.00	20%	2.00	4	1,234.00	40	35	1	0.00	1,310.00	4a	0
1808.1	(a)	Employer's Failure to Obtain, Review, Sign, and Maintain Copy of Report of DMV Record of Driver	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
1808.1	(c)	Employer's Failure to Participate in DMV Pull-Notice System	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
1808.1	(d)	Employer's Failure to Notify DMV to Discontinue Enrollment in Pull-Notice System Upon Termination of Driver's Employment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
1808.1	(e)	Failure of Specified Drivers to Enroll in DMV Pull-Notice System	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
1808.1	(j)(1)	Employer's Failure to Obtain Copy of Report of Current DMV Record of Casual Driver	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
1808.1	(n)	Failure to Present on Request a Report of DMV Record of Driver of Taxicab	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
2402.6	(a-c,e)	Violation of Regulations or Standards for Operation of Vehicles Using Compressed or Liquefied Gas	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2504		Violation of CHP Licensing Regulations	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2510	(b)	Operation of Private Emergency Vehicle or Armored Car Without CHP Inspection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2807	(b)	Operation of School Bus Without CHP Certificate of Compliance	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2807.1	(b)	Operation of Vehicles Transporting Pupils Without CHP Certificate of Compliance	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2807.2		Failure to Retain Record of Inspection on File for Review by CHP Upon Request	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
2807.3		Operation of Youth Bus Without Display of Appropriate Certificate Verifying Inspection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2813.5		Use or Issuance of Unauthorized Inspection Stickers	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
2814		Failure to Stop and Submit to Roadside Passenger Vehicle Inspection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2814.1	(b)	Failure to Stop and Submit to Vehicle Inspection Checkpoint for Exhaust Violations	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2814.2	(a)	Failure to Stop and Submit to Sobriety Checkpoint Inspection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2815		<sup>4</sup> Failure to Obey School Crossing Guard	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	1
2816		Unlawful to Load/Unload Children Unless Traffic Is Controlled	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
2817		Failure to Obey Peace Officer-Funeral Procession	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
2818		Traversing Electronic Beacon/Flare/Cone Pattern Set by Public Safety Personnel	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	1
4000	(a)(1)	A <sup>5</sup> No Evidence of Current Registration	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	1a	0
4000	(a)(1)	B No Evidence of Current Registration	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000	(b)	A <sup>6</sup> Vehicle on Highway Registered in Violation of Pollution Control Regulations	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	1a	0
4000	(b)	B Vehicle on Highway Registered in Violation of Pollution Control Regulations	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.4	(a)	A Unregistered California-Based Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4000.4	(a)	B Unregistered California-Based Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.6	(a)	A Failure to Submit Application or Declare Accurate Combined Gross Vehicle Weight Pursuant to VC 9400.1	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4000.6	(a)	B Failure to Submit Application or Declare Accurate Combined Gross Vehicle Weight Pursuant to VC 9400.1	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 1,001-1,500 Pounds in Excess of Declared Gross Vehicle Weight	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00	4a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** / Fee	Category DMV Points
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 1,501–2,000 Pounds in Excess of Declared Gross Vehicle Weight	300	300	210.00	150	150	60	60	4	1,234.00	40	35	1	0.00	1,310.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 2,001–2,500 Pounds in Excess of Declared Gross Vehicle Weight	350	350	245.00	175	175	70	70	4	1,439.00	40	35	1	0.00	1,515.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 2,501–3,000 Pounds in Excess of Declared Gross Vehicle Weight	400	400	280.00	200	200	80	80	4	1,644.00	40	35	1	0.00	1,720.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 3,001–3,500 Pounds in Excess of Declared Gross Vehicle Weight	450	450	315.00	225	225	90	90	4	1,849.00	40	35	1	0.00	1,925.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 3,501–4,000 Pounds in Excess of Declared Gross Vehicle Weight	500	500	350.00	250	250	100	100	4	2,054.00	40	35	1	0.00	2,130.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 4,001–4,500 Pounds in Excess of Declared Gross Vehicle Weight	550	550	385.00	275	275	110	110	4	2,259.00	40	35	1	0.00	2,335.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 4,501–5,000 Pounds in Excess of Declared Gross Vehicle Weight	600	600	420.00	300	300	120	120	4	2,464.00	40	35	1	0.00	2,540.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 5,001–6,000 Pounds in Excess of Declared Gross Vehicle Weight	700	700	490.00	350	350	140	140	4	2,874.00	40	35	1	0.00	2,950.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 6,001–7,000 Pounds in Excess of Declared Gross Vehicle Weight	800	800	560.00	400	400	160	160	4	3,284.00	40	35	1	0.00	3,360.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 7,001–8,000 Pounds in Excess of Declared Gross Vehicle Weight	900	900	630.00	450	450	180	180	4	3,694.00	40	35	1	0.00	3,770.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 8,001–10,000 Pounds in Excess of Declared Gross Vehicle Weight	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00	4a 0
4000.6	(d)	Commercial Vehicle With Gross Vehicle Weight Over 10,000 Pounds, 10,001 Pounds and Over in Excess of Declared Gross Vehicle Weight	2,000	2,000	1,400.00	1,000	1000	400	400	4	8,204.00	40	35	1	0.00	8,280.00	4a 0
4001	A	Failure to Register Exempt Vehicles and Display License Plate Bearing Distinguishing Marks Indicating Exemption	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4001	B	Failure to Register Exempt Vehicles and Display License Plate Bearing Distinguishing Marks Indicating Exemption	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4004	(a,b)	A Violation of Foreign Commercial Vehicle Temporary Registration or Trip Permit Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4004	(a,b)	B Violation of Foreign Commercial Vehicle Temporary Registration or Trip Permit Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4152.5	A	Failure to Apply for Registration–Foreign Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4152.5	B	Failure to Apply for Registration–Foreign Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4159	A	Notify DMV of Change of Address Within 10 Days	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4159	B	Notify DMV of Change of Address Within 10 Days	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4160	A	Change of Address on Registration Card	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4160	B	Change of Address on Registration Card	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4161	(a)	A Failure to Notify of Engine/Motor Change	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4161	(a)	B Failure to Notify of Engine/Motor Change	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4301	A	Surrender Evidence of Foreign Registration	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4301	B	Surrender Evidence of Foreign Registration	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4453.6		Failure to Furnish Name and Address to Officer Upon Request	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
4454	(a)	A Failure to Maintain Registration Card With Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
4454	(a)	B Failure to Maintain Registration Card With Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
4455	A	Failure to Display Temporary Permit–Foreign Commercial Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
4455	B	Failure to Display Temporary Permit--Foreign Commercial Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4456	(a) A	<sup>7</sup> Reporting Vehicle Sale to the DMV	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4456	(a) B	Reporting Vehicle Sale to the DMV	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4456	(b)(1) A	<sup>8</sup> Reporting Auction Vehicle Sale to the DMV	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4456	(b)(1) B	Reporting Auction Vehicle Sale to the DMV	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4457	A	Failure to Replace Lost, Damaged Cards and/or Plates	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4457	B	Failure to Replace Lost, Damaged Cards and/or Plates	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4458	A	Both Plates Lost or Stolen	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4458	B	Both Plates Lost or Stolen	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4459	A	Failure to Replace Lost or Damaged Owner's Certificate	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4459	B	Failure to Replace Lost or Damaged Owner's Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4461	(a) A	<sup>9</sup> Improper Use of Evidence of Registration	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4462	(a) A	Failure to Present Evidence of Registration to Officer	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4462	(a) B	Failure to Present Evidence of Registration to Officer	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4462	(b) A	Registration Presented for Wrong Vehicle	25	30	21.00	15	15	5	6	2	119.00	40	35	1	0.00	195.00	1a	0
4462	(b) B	Registration Presented for Wrong Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
4463	(e) (1-4)	<sup>10</sup> Unlawful Act With Clean Air Sticker	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a	0
4464	A	Altered License Plates Displayed on Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
4464	B	Altered License Plates Displayed on Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5011	A	Display of Special Construction Identification Plates	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5011	B	Display of Special Construction Identification Plates	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5017	(a) A	Failure to Attach Identification Plate/Give Notice of Sale or Destruction of Vehicle or Equipment as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5017	(a) B	Failure to Attach Identification Plate/Give Notice of Sale or Destruction of Vehicle or Equipment as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5017	(b) A	Failure to Attach Permanent Identification Plate as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5017	(b) B	Failure to Attach Permanent Identification Plate as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5017	(c) A	Failure to Present Identification Certificate as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5017	(c) B	Failure to Present Identification Certificate as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5017	(d) A	Failure to Apply for Transfer of Ownership of Vehicle Within 10 Days of Sale	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5017	(d) B	Failure to Apply for Transfer of Ownership of Vehicle Within 10 Days of Sale	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5030	A	Motorized Bicycle Required to Display Plates	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5030	B	Motorized Bicycle Required to Display Plates	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5032	A	Operation of Motorized Bicycle Without Applying for a License Plate Within 5 Days of Purchase	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5032	B	Operation of Motorized Bicycle Without Applying for a License Plate Within 5 Days of Purchase	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5037	(a) A	Motorized Bicycle Without Assigned Plates (post-7/1/81)	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5037	(a) B	Motorized Bicycle Without Assigned Plates (post-7/1/81)	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5037	(b) A	Motorized Bicycle Without Assigned Plates (pre-7/1/81)	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5037	(b) B	Motorized Bicycle Without Assigned Plates (pre-7/1/81)	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5109	A	Transfer or Retention of Environmental Plates	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5109	B	Transfer or Retention of Environmental Plates	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5200	(a) A	Two License Plates--Display Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0



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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
5200	(a)	B Two License Plates–Display Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5200	(b)	A One License Plate–Display Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5200	(b)	B One License Plate–Display Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5201	(a)(1-6)	A Plates Improperly Positioned	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5201	(a)(1-6)	B Plates Improperly Positioned	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5201	(b)(1,2)	A Illegal License Plate Covering	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5201	(b)(1,2)	B Illegal License Plate Covering	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5201	(c)	A Reading or Recognition of License Plate by an Electronic Device or Remote Emission Sensing Device Illegally Obstructed or Impaired	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5201	(c)	B Reading or Recognition of License Plate by an Electronic Device or Remote Emission Sensing Device Illegally Obstructed or Impaired	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5201.1	(a)	<sup>11</sup> Sale of Prohibited Product or Device to Obscure License Plate	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00	4a	0
5201.1	(b)	<sup>12</sup> Operation of Vehicle With Prohibited Product or Device to Obstruct or Impair Reading or Recognition of License Plate by Electronic or Remote Emission Sensing Device	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00	4a	0
5201.1	(c)	<sup>13</sup> Erasing, Painting Over, or Altering Reflective Coating of License Plate	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00	4a	0
5202	A	Period of Display of Plates Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5202	B	Period of Display of Plates Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5204	(a)	A Current Month and Year Tab Not Properly Attached	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5204	(a)	B Current Month and Year Tab Not Properly Attached	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5206	A	Present Certificate of Partial-Year Registration	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5206	B	Present Certificate of Partial-Year Registration	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5352	A	Failure to Maintain Annual Registration for Trailer Coach	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5352	B	Failure to Maintain Annual Registration for Trailer Coach	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5604		Noncompliance With Dealer Insurance Notification Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5753	(a-d)	Failure of Private Party to Deliver Certificate of Ownership and Registration Card to Transferee	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5753	(f)	Failure of Private Owner Upon Written Request to Disclose Pertinent Information Regarding Payment or Documents Required for Release	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5900	(a-c)	Notice of Sale/Transfer of Vehicle by Owners Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5902	A	Failure to Notify DMV of Transfer Within 10 Days	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
5902	B	Failure to Notify DMV of Transfer Within 10 Days	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
5906.5	(a,b)	Failure to Notify DMV of Mileage on Transfer of Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
6700	(a-c)	A Failure to Register Within 20 Days of Specified Circumstances	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
6700	(a-c)	B Failure to Register Within 20 Days of Specified Circumstances	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
8802	A	Failure to Return Evidence of Registration to DMV Upon Cancellation, Suspension, or Revocation	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
8802	B	Failure to Return Evidence of Registration to DMV Upon Cancellation, Suspension, or Revocation	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
9102.5	(b)	A Operation of Private School Bus Without Appropriate License and Payment of Fees	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
9102.5	(b)	B Operation of Private School Bus Without Appropriate License and Payment of Fees	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
9400	(a-c,f)	A Commercial Vehicle Weight Fees Due	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
9400	(a-c,f)	B Commercial Vehicle Weight Fees Due	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
9400.1	(f)	A Failure to Display Required Gross Vehicle Weight Sticker	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** / Fee	Category	DMV Points
9400.1	(f)	B Failure to Display Required Gross Vehicle Weight Sticker	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
9406	A	Failure to Report Alterations Increasing Weight Fees	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
9406	B	Failure to Report Alterations Increasing Weight Fees	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
9564	(c)	Reconstruction of Vehicle Delivered to Scrap Metal Processor Restricted	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
10502	(b)	Failure to Inform CHP of Stolen Vehicle Recovery	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
10552		Making Fraudulent Report of Theft of Vessel With Intent to Deceive	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
11754		<sup>13.5</sup> Rental of Vehicle Subject to Recall	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12500	(a)	A <sup>14</sup> Unlawful to Drive Unless Licensed	75	80	56.00	40	40	15	16	4	326.00	40	35	1	0.00	402.00		0
12500	(a)	B Unlawful to Drive Unless Licensed	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12500	(b,d)	A <sup>15</sup> Licensed Driver Out of Classification	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12500	(b,d)	B Licensed Driver Out of Classification	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12500	(c)	A <sup>16</sup> Unlawful to Drive in Offstreet Parking Facility Out of Classification	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12500	(c)	B Unlawful to Drive in Offstreet Parking Facility Out of Classification	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12500	(e)	<sup>17</sup> Operating Motorized Scooter in Violation of Emission Requirements	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12502	(a)(1)	Nonresident Driver Over 18 Without Valid Driver's License	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12502	(a)(2)	Nonresident Driver 21 or Over Transporting Hazardous Material in Commercial Vehicle Without Valid Driver's License and Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12502	(b)	Nonresident Driver of Commercial Vehicle Without Medical Certificate or Proof As Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12502	(c)	Noncompliance of Nonresident Driver With Medical Certificate Requirements	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509	(d)	Violation of Instruction Permit Restriction	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509	(d)	A Driving a Motor Vehicle Without a Required Instruction Permit in Possession	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509	(d)	B Driving a Motor Vehicle Without Required Instruction Permit in Possession	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12509	(e)	Violation of Instruction Permit Restriction by Driving Government Vehicle Without Instruction by California National Guard	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509	(e)	A Violation of Instruction Permit Restriction by Driving Government Vehicle Without Permit in Possession	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509	(e)	B Violation of Instruction Permit Restriction by Driving Government Vehicle Without Permit	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12509.5	(a)	Violation of Instruction Permit Restriction by Driving a Motorcycle Without Completion of Motorcyclist Safety Program	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12509.5	(c)	Violation of Instruction Permit Restriction by Driving a Motorcycle During Darkness, on a Freeway, or With a Passenger	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		1
12511	A	Possessing More Than One License	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12511	B	Possessing More Than One License	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12515	(a)	Minor Under 18 Employed for Purpose of Driving	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12516		Unlawful to Drive School Bus if Under 18	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12517	(a)(1)	A Operation of School Bus Without Appropriate Driver's License in Possession While Transporting Pupils	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12517	(a)(1)	B Operation of School Bus Without Appropriate Driver's License in Possession While Transporting Pupils	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12517	(b)	A Operation of School Pupil Activity Bus Without Appropriate Driver's License in Possession	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
12517	(b)	B Operation of School Pupil Activity Bus Without Appropriate Driver's License in Possession	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
12521	(a,b)	Tour Bus Driver Required to Use Safety Belt/Report Tour Bus Accidents	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12522	(a)	Noncompliance With First Aid Exam Requirement for School Bus Operators	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12523	(a)	A Operation of Youth Bus Without Required License and Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12523	(a)	B Operation of Youth Bus Without Required License and Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12523	(d)	Noncompliance With Youth Bus Operation Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	2a	0
12523.5	(a)	A Paratransit Bus Driver Must Have Special Endorsement	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12523.5	(a)	B Paratransit Bus Driver Must Have Special Endorsement	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12524	(a)	A Operation of Vehicle Hauling Fissile Class III Shipments or Large Quantities of Radioactive Materials Without Appropriate License or Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	0
12524	(a)	B Operation of Vehicle Hauling Fissile Class III Shipments or Large Quantities of Radioactive Materials Without Appropriate License or Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12804.6	(a)	A Operation of Transit Bus Without Appropriate Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12804.6	(a)	B Operation of Transit Bus Without Appropriate Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12804.6	(f)	Unlawful for Employer to Permit Person to Drive Transit Bus Without a Valid Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12804.9	(c)	A Operation of Commercial Motor Vehicle Without Required Medical Certificate	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12804.9	(c)	B Operation of Commercial Motor Vehicle Without Required Medical Certificate	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12804.9	(j)	A Operation of Vanpool Vehicle Without Required Medical Exam Evidence and DUI Conviction History Statement	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12804.9	(j)	B Operation of Vanpool Vehicle Without Required Medical Exam Evidence and DUI Conviction History Statement	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12804.11	(a)	A Operation of Firefighting Equipment Without License or Endorsement	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12804.11	(a)	B Operation of Firefighting Equipment Without License or Endorsement	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12814.6	(a)(1)	A Failure to Carry Instruction Permit as Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12814.6	(a)(1)	B Failure to Carry Instruction Permit as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12814.6	(b)(1)	A <sup>18</sup> Failure to Obey Licensing Provisions	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12814.6	(b)(2)	A Violation of Provisional License Driving Restrictions	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12814.6	(b)(2)	B Violation of Provisional License Driving Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12815	(a)	A Must Obtain Duplicate if Original License Lost, Destroyed, or Mutilated	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12815	(a)	B Must Obtain Duplicate if Original License Lost, Destroyed, or Mutilated	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12950	(a)	A Failure to Sign Driver's License	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12950	(a)	B Failure to Sign Driver's License	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12951	(a)	A No Valid License in Possession	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	
12951	(a)	B No Valid License in Possession	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
12952	(a)	A Failure to Display License to Court Upon Request	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
12952	(a)	B Failure to Display License to Court Upon Request	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
13003		Failure to Apply for Replacement Identification Card Upon Mutilation and/or Failure to Surrender ID Card Within 10 Days of Notification That Card Is Mutilated	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
13007		Identification Card Holder to Notify DMV of Address Change Within 10 Days	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0	

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** / Fee	Category DMV Points
13386	(b)(1)	Furnishing of Information by Manufacturer to Use Ignition Interlock Device Contrary to Certified Purpose	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0
13386	(c)	Altering of Ignition Interlock Device Functionality by Installer, Service Center, or Technician	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0
13386	(i)	<sup>18.5</sup> Prohibition of Disclosure of Individuals Required to Install Ignition Interlock Device	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14600	(a) A	Failure to Notify DMV of Address Change Within 10 Days	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0
14600	(a) B	Failure to Notify DMV of Address Change Within 10 Days	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
14600	(b) A	Failure to Present DMV Change of Address Form to Peace Officer	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	0
14600	(b) B	Failure to Present DMV Change of Address Form to Peace Officer	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
14601.1	(a)	<sup>19</sup> Driving Motor Vehicle or Off-Highway Motor Vehicle While Suspended or Revoked for Offenses Not Relating to Driving Ability	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a 2
14603	A	Violation of License Restrictions	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
14603	B	Violation of License Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
14605	(a)	Permitting Unlicensed Parking Lot Attendant to Drive	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14605	(b)	Hiring Unlicensed Parking Lot Attendant to Drive	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14606	(a)	Employing/Hiring/Permitting/Authorizing Person to Drive on Highway Without License Required for Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14606	(b)	Failure by Employer to Report Within 10 Days Failure of Commercial Driver on Reexamination	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14606	(c)	<sup>20</sup> Failure of Employer to Obtain and Retain Copy of Medical Certification of Driver of Commercial Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14607		Permitting Unlicensed Minor to Drive	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14608	(a)	License and Inspection of License Required for Rental of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
14611		<sup>21</sup> Knowingly Permit Transportation of Radioactive Materials Without Required License	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	4	20,504.00	40	35	1	0.00	20,580.00	1a 0
15240	(a-d)	Employer Allowing, Permitting, or Requiring Driving of Commercial Motor Vehicle as Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15250	(a)(1) A	Commercial Driver's License Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15250	(a)(1) B	Commercial Driver's License Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
15250	(a)(2) A	Commercial Driver's License With Hazardous Materials Endorsement Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15250	(a)(2) B	Commercial Driver's License With Hazardous Materials Endorsement Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
15275	(a) A	Person Driving Commercial Vehicle Must Have Any Required Endorsements	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15275	(a) B	Person Driving Commercial Vehicle Must Have Any Required Endorsements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
15309.5	(a)(1)	<sup>22</sup> Sell, Offer, Distribute, or Use Crib Sheet or Device for Commercial Driver's License Examination	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15309.5	(a)(2)	<sup>23</sup> Impersonate or Allow Impersonation of Applicant for Commercial Driver's License Examination	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15309.5	(a)(3)	<sup>24</sup> Provide or Use Unauthorized Assistance During Commercial Driver's License Examination	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15500		Acquisition of Vehicle by Minor Without Valid Driver's License	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
15620	(a) (1,2)	<sup>25</sup> Leaving Child 6 Years of Age or Younger Unattended in Motor Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	2a 0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
16000	(a)	Accident Report Required Within 10 Days of Accident	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
16002	(a)	Failure to Report Work-Related Accidents	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
16003		Failure of Owner to Report Accident Where Driver Is Incapable of Doing So	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
16020	(a)	Failure to Carry Evidence of Financial Responsibility	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
16025	(a)	<sup>26</sup> Failure to Exchange Mandatory Information at Scene of Accident	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
16028	(a)	<sup>27</sup> Failure to Provide a Peace Officer Evidence of Financial Responsibility	200	200	140.00	100	100	40	40	4	824.00	40	35	1	0.00	900.00	4a	0
16028	(c)	Evidence of Financial Responsibility	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
16457		Driving Vehicle Not Covered by Certificate of Proof of Financial Responsibility/Knowing Failure to Disclose Ownership or Subsequent Acquisition of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
16502	(a)	Failure to Maintain Proof of Financial Responsibility During Use of Vehicle in Conduct of Business	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
20004		Delay in Reporting Accident by Driver in Accident Resulting in Death of a Person	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	1
20006		Failure to Present Valid Identification Upon Collision With Another Party	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
20008	(a,b)	Failure to Report Accident Within 24 Hours	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
20010		Driver Unable to Report Accident	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21070		<sup>28</sup> Unsafe Operation of a Motor Vehicle in Violation of Division 11 Provision Causing Bodily Harm	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	0
21070		<sup>29</sup> Unsafe Operation of a Motor Vehicle in Violation of Division 11 Provision Causing Great Bodily Harm	95	100	70.00	50	50	19	20	4	408.00	40	35	1	0.00	484.00	4a	0
21100.3		Failure to Obey Traffic Directions	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21106	(b)	Use of Crosswalks Where Prohibited by Sign	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21113	(a) (1)	<sup>30</sup> Unlawful Driving on Public Grounds	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21116	(a)	Unlawful Driving on Levee, Canal Bank, etc.	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21201	(a-d)	A Equipment Requirements for Bicycles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21201	(a-d)	B Equipment Requirements for Bicycles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
21201.5	(a,b)	Selling Bicycle Without Required Reflectors	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21202	(a)	Bicyclist at Less Than Normal Speed Must Keep to Right	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21203		Illegal for Bicyclist to Hitch Ride on Other Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21204	(a,b)	Riding Bicycle on Other Than Permanent Seat	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21205		Illegal for Bicyclist to Carry Articles That Prevent Keeping One Hand on Handlebar	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21207.5	(a)	Illegal Operation of Motorized Bicycle or Class 3 Electric Bicycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21208	(a,b)	Riding Outside Bicycle Lane Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21209	(a)	Motor Vehicle in Bicycle Lane Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21210		<sup>31</sup> Bicycle Parked—Impeding Pedestrian Traffic Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21211	(a,b)	Illegally Impeding Bicycle Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21212	(a)	<sup>32</sup> Under 18 Shall Not Operate Bicycle, Nonmotorized Scooter, or Skateboard/Wear In-line or Roller Skates/Ride Bicycle, Nonmotorized Scooter, or Skateboard as Passenger Without a Helmet	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21213	(a)	Operation of Class 3 Electric Bicycle by Person Under 16 Years of Age	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21213	(b)	Violation of Helmet Requirement for Class 3 Electric Bicycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21221		<sup>33</sup> Motorized Scooter Operation Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21221.5		<sup>34</sup> Operating a Motor Scooter While Under the Influence	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0

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21223	(a-c)	<sup>35</sup> Motorized Scooter Equipment Requirements During Darkness	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21226	(b,c)	<sup>36</sup> Violation of Motorized Scooter Muffler Equipment Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21226	(d)	<sup>37</sup> Violation of Motorized Scooter Exhaust/Noise Level Requirements/Operation of Motorized Scooter With Unlawfully Modified Exhaust System	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21228		<sup>38</sup> Operating Motorized Scooter at Less Than Normal Speed of Traffic	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21229	(a,b)	<sup>39</sup> Failure to Operate Motorized Scooter in Bicycle Lane	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21235	(a-j)	<sup>40</sup> Illegal Operation of Motorized Scooter	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21260	(a), (b)(2)	Illegal Operation of Low-Speed Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21281.5	(a-d)	Illegal Operation of Electrical Personal Assistive Mobility Device	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21291		<sup>41</sup> Operation of Electrically Motorized Board by Person Under 16 Years of Age	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21292		<sup>42</sup> Operation of Electrically Motorized Board by Person Without Wearing Helmet as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21293	(a-c)	<sup>43</sup> Operation of Electrically Motorized Board During Darkness Without Required Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21294	(a-c)	<sup>44</sup> Illegal Operation of Electrically Motorized Board	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21296	(a)	<sup>45</sup> Operation of Electrically Motorized Board While Under Influence of Alcohol or Drug	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
21367	(b,c)	Failure to Obey Traffic Control/Devices at Construction Site	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21451	(a,b)	"Green" Signal-Vehicular Responsibilities	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21451	(c,d)	"Green" Signal-Pedestrian Responsibilities	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21452	(b)	Failure of Pedestrian to Properly Respond to Signal of Yellow Light or Arrow	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21453	(a,c)	<sup>46</sup> "Red" Signal-Vehicular Responsibilities	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21453	(b)	"Red" Signal-Vehicular Responsibilities With Right Turn	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21453	(d)	"Red" Signal-Pedestrian Responsibilities	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21454	(c)	<sup>47</sup> Lane Use-Red Control Signal	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21454	(d)	Lane Use-Flashing Yellow Control Signals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21455		Traffic Control Signal at Other Than Intersection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21456	(a,b)	Pedestrian Violation of "Walk" or "Wait" Signals	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21457	(a)	<sup>48</sup> Actions Required at Flashing Red Signal	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21457	(b)	Actions Required at Flashing Yellow Signal	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21460	(a,b)	Improper Turns Over Double Lines/Solid Lines to Right Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21460.5	(c)	Improper Turn From Two-Way Left-Turn Lane	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21461	(a)	Driver Failure to Obey Signs/Signals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21461.5		Pedestrian Failure to Obey Signs/Signals	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21462		Disobedience of Driver or Streetcar Motorman to Traffic Control Signal	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21462		Disobedience of Pedestrian or Person in Control of an Animal to Traffic Control Signal	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21463		No Person Shall Illegally Operate Signals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21464	(a)	Unauthorized Interference With Traffic Device Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21464	(b)	Unauthorized Use of Traffic Interference Device	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21464	(c)	Unauthorized Possession or Distribution of Traffic Interference Device	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
21464	(e)	<sup>49</sup> Willful Interference With Traffic Device or Willful Use, Possession, or Distribution of Traffic Interference Device That Does Not Result in Injury	500	500	350.00	250	250	100	100	4	2,054.00	40	35	1	0.00	2,130.00	4a	0
21465		Placement of Unauthorized Traffic Devices Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21466		Unlawful Display of Light Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21466.5		Light Impairing Driver's Vision Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21650		Failure to Keep to Right Side of Road	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21650.1		Bicycle to Travel in Same Direction as Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21651	(a)	Driving Across Dividing Section on Freeway Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21652		Improperly Entering or Leaving Highway or Service Road	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21654	(a)	Slow-Moving Vehicles Keep to Right Edge of Roadway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21655	(b)	Failure to Use Designated Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21655.1	(a)	<sup>50</sup> <u>Driving in Restricted Use Designated Public Transit Bus Lane</u>	<u>35</u>	<u>40</u>	<u>28.00</u>	<u>20</u>	<u>20</u>	<u>7</u>	<u>8</u>	<u>4</u>	<u>162.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>238.00</u>	<u>2a</u>	<u>0</u>
21655.5	(b)	<sup>51</sup> Improper Use of Preferential Lanes	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
21655.8	(a)	<sup>52</sup> Driving Over Double Lines of Preferential Lanes	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21655.9	(b)	<sup>53</sup> Driving Low Emission Vehicle Without Required Decal or Label	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21656		Failure of Vehicle to Turn Out As Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21657		Driving Against One-Way Traffic Patterns	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21658	(a,b)	Lane Straddling/Failure to Use Specified Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21659		Unsafe Driving on Three-Lane Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21660		Failure of Approaching Vehicles to Pass to the Right	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21661		Right-of-Way Rule--Narrow Grades	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21662	(a,b)	Mountains--Keep to Right--Use Horn	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21663		Driving on Sidewalk Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21664		Failure to Use Designated Freeway On-/Off-Ramp Properly	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21700		Load/Passengers Not to Obstruct Driver's View	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21701		Interference With Driver's Control of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21703		Following Too Closely Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21704	(a)	Trucks/Trailers Following Too Closely Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21705		Caravans Following Too Closely Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21706		Following Emergency Vehicles Too Closely Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21706.5	(b)	Operation of Vehicle in Unsafe Manner in an Emergency Incident Zone	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	1
21707		Driving Within 300 Feet of Fire Areas Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21708		Running Over Unprotected Fire/Chemical Hose Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21709		Driving Within Safety Zone Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21710		Coasting in Neutral on Downgrade Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21711		Whipping or Swerving Towed Vehicle Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21712	(a)	Allowing Riding on Portion of Vehicle Not Designed for Passenger Use Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21712	(b)	Unlawful Riding on Vehicle Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21712	(c)	<sup>54</sup> Driver Permitting Riding in Trunk of Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21712	(d)	<sup>55</sup> Riding in Trunk of Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
21712	(g)	Towing Trailer Coach, Camp Trailer, or Trailer Carrying Vessel That Contains Passenger	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21712	(h)	Driving While Towing Person Riding on Motorcycle, Motorized Bicycle, Bicycle, Coaster, Roller Skates, Sled, Skis, or Toy Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
21714	(a)	Use of Three-Wheeled Vehicle On or Adjacent to Striping or Markers Designating Adjacent Traffic Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21714	(b)	Use of Three-Wheeled Vehicle Between Two or More Vehicles Traveling in Adjacent Traffic Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21715	(a,b)	Exceeding Passenger Vehicle Towing Combination Limits	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21716		Golf Cart Operation Restricted	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
21717		Turning Across Bicycle Lane	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21718	(a)	Stopping, Parking, or Leaving Vehicle Standing Upon a Freeway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21720		Unlawful Operation of Pocket Bike	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21750		Overtaking and Passing Unsafely	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21751		Passing Without Sufficient Clearance	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21752	(a,b,d)	Driving Left of Center—Limited View/Within 100 Feet of Bridge, Viaduct, Tunnel/Within 100 Feet or When Traversing Intersection—Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21752	(c)	<sup>56</sup> Driving Left of Center—Within 100 Feet or When Traversing Railroad Grade Crossing—Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21753		Failure to Yield to Overtaking Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21754		Improper Passing on Right Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21755	(a)	Unsafe Passing on Right Shoulder	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21756	(a-c)	Unsafe Passing of Standing Streetcar, Trolley Coach, or Bus Safety Zones	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21757		Passing Street Car on Left Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21758		Unsafe Passing on Grades Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21759		Failure to Exercise Caution When Passing Animals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21760	(b)	<sup>57</sup> Overtaking or Passing Bicycle Unsafely	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
21760	(b)	<sup>58</sup> Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Unsafely	220	220	154.00	110	110	44	44	4	906.00	40	35	1	0.00	982.00	4a	1
21760	(c)	<sup>59</sup> Overtaking or Passing Bicycle at Distance of Less Than Three Feet	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
21760	(c)	<sup>60</sup> Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle at Distance of Less Than Three Feet	220	220	154.00	110	110	44	44	4	906.00	40	35	1	0.00	982.00	4a	1
21760	(d)	<sup>61</sup> Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
21760	(d)	<sup>62</sup> Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	220	220	154.00	110	110	44	44	4	906.00	40	35	1	0.00	982.00	4a	1
21800	(a-c)	Violation of Right-of-Way/Uncontrolled Intersection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21800	(d) (1, 2)	Violation of Right-of-Way/Controlled Intersection With Inoperative Control Signals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21801	(a,b)	Violation of Right-of-Way—Left Turn	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21802	(a,b)	Violation of Right-of-Way—Entering Through Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21803	(a,b)	Violation of "Yield" Sign	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21804	(a,b)	Entering Highway From Alley or Driveway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21805	(b)	Violation of Right-of-Way at Equestrian Crossing	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
21805	(c)	Violation of Right-of-Way by Rider—Posing Hazard	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
21806	(a,b)	<sup>63</sup> Failure to Yield to Emergency Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
21806	(c)	<sup>64</sup> Failure to Yield to Emergency Vehicle—Pedestrian	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
21807		Driving Authorized Emergency Vehicle Without Due Regard for Safety of Persons and Property	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1



**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**

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(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points	
21809	(a)	<sup>65</sup> Failure to Slow Down or Change Lane When Approaching and Passing Stationary Emergency Vehicle or Tow Truck Displaying Specific Lights	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
21950	(a,c)	Driver to Yield Right-of-Way at Crosswalks	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
21950	(b)	Pedestrian Right-of-Way at Crosswalks Regulated	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21951		<sup>66</sup> Overtaking Vehicles Stopped for Pedestrians	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	2a	1	
21952		Failure to Yield Right-of-Way on Sidewalk to Pedestrian	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
21953		Pedestrian Must Use Tunnel or Overhead Crossing	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21954	(a)	Pedestrians Must Yield Right-of-Way Outside of Crosswalks	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21954	(b)	Failure of Driver to Exercise Due Care for Safety of Pedestrian on Roadway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
21955		Crossing Between Controlled Intersections (Jaywalking)	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21956	(a)	Pedestrian on Roadway Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21957		Soliciting Ride (Hitchhiking) Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21959		Skiing or Tobogganing Across Highway Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21960	(a)	<sup>67</sup> Violation of Freeway or Expressway Use Restrictions by Pedestrian, Motor-Driven Cycle, Motorized Bicycle, or Motorized Scooter	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1	
21966		Pedestrian Prohibited in Bicycle Lane	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21968		Motorized Skateboard Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0	
21970	(a)	Vehicle Stopped Unnecessarily and Blocking Crosswalk or Sidewalk	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
21971		<sup>68</sup> Violating Specified Provisions and Causing Bodily Injury	220	220	154.00	110	110	44	44	4	906.00	40	35	1	0.00	982.00	4a	0	
22100	(a,b)	Turn at Intersection From Wrong Position	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22100.5		U-Turn at Controlled Intersection	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22101	(d)	Violating Special Traffic Control Markers	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22102		Illegal U-Turn in Business District	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22103		Illegal U-Turn in Residential District	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22104		Illegal U-Turn Near Fire Station	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22105		Illegal U-Turn on Highway Without Unobstructed View	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22106		Unsafe Starting or Backing on Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22107		Unsafe Turn or Lane Change Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22108		Signal Required Before Turning or Changing Lanes	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22109		Sudden Stopping Without Signaling	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22110	(a,b)	Hand/Lamp Signal Not Given	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22111	(a-c)	Hand Signals Improperly Given	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22112	(a-e)	School Bus Driver Misuse of Signals; Improper Stop; Failure to Escort Pupils	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22348	(b)	<sup>69</sup> Speeding Over 100 MPH Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	35	1	0.00	900.00	4a	2	
22348	(c)	Failure of Vehicles Subject to VC 22406 to Use Designated Lane	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1	
22349	(a)	Speeding 1–15 MPH Over 65 MPH Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1	
22349	(a)	Speeding 16–25 MPH Over 65 MPH Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1	
22349	(a)	Speeding ≥ 26 MPH Over 65 MPH Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1	
22349	(b)	Speeding 1–15 MPH Over 55 MPH Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1	
22349	(b)	Speeding 16–25 MPH Over 55 MPH Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1	
22349	(b)	Speeding ≥ 26 MPH Over 55 MPH Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1	
22350		Unsafe Speed for Prevailing Conditions 1–15 MPH Over Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1	
22350		Unsafe Speed for Prevailing Conditions 16–25 MPH Over Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1	
22350		Unsafe Speed for Prevailing Conditions ≥ 26 MPH Over Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1	
22351	(a,b)	Driving in Excess of Prima Facie Speed Limits Established in VC 22352																4a	1

[See Speed Chart]

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
22352	(a) (1)	Operating Vehicle in Excess of 15 MPH at Railroad Crossing															4a	1
22352	(a) (2)	Operating Vehicle in Excess of 15 MPH at Freeway Intersection With No Clear Field of Vision															4a	1
22352	(a) (3)	Operating Vehicle in Excess of 15 MPH on Any Alley															4a	1
22352	(b) (1)	Operating Vehicle in Excess of 25 MPH in Business District															4a	1
22352	(b) (2)	Operating Vehicle in Excess of 25 MPH by School															4a	1
22352	(b) (3)	Operating Vehicle in Excess of 25 MPH by Senior Center															4a	1
22354	(a)	Failure to Abide by Speed Limits Set by the State Department of Transportation (DOT) on State Highways															4a	1
22355		Failure to Abide by Variable Speed Limits Set by the State Department of Transportation (DOT)															4a	1
22356	(b)	Exceeding Maximum Speed Limit of 70 MPH, 1–15 MPH Over Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
22356	(b)	Exceeding Maximum Speed limit of 70 MPH, 16–25 MPH Over Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1
22356	(b)	Exceeding 70 MPH Maximum Speed, ≥ 26 MPH Over Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22357		Violation of Prima Facie Local Speed Limit															4a	1
22358		Violation of Local Speed Limit															4a	1
22358.3		Violation of Local Speed Limit on Narrow Street															4a	1
22358.4		Violation of Prima Facie Local Speed Limit															4a	1
22360		Violation of Local Speed Limits Between Business and Residence Districts															4a	1
22361		Violation of Speed Limit on Multiple Lane Highways															4a	1
22362		Violation of Speed Limit Surrounding Special Work Crews															4a	1
22363		Violation of DOT or Local Speed Limit Set for Snow or Ice															4a	1
22364		Violation of Speed Limit Set by DOT on State Highways															4a	1
22400	(a,b)	Minimum Speed Law–Impeding Traffic Flow	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
22405	(a)	Exceeding Maximum Posted Speeds on Bridge/Tube/Tunnel, 1–15 MPH Over Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
22405	(a)	Exceeding Maximum Posted Speeds on Bridge/Tube/Tunnel, 16–25 MPH Over Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1
22405	(a)	Exceeding Maximum Posted Speeds on Bridge/Tube/Tunnel, ≥ 26 MPH Over Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22406	(a)	<sup>70</sup> Truck or Tractor 1–9 MPH Over 55 MPH Limit	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	1
22406	(a)	<sup>71</sup> Truck or Tractor 10 MPH or More over 55 MPH Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22406	(b-f)	<sup>72</sup> Posted Speed for Designated Vehicles	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	1
22406	(b-f)	<sup>73</sup> Posted Speed for Designated Vehicles–In Excess of Speed Limit by 10 MPH or More	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22406.5		<sup>74</sup> Driving Tank Vehicle at Excessive Speed	500	500	350.00	250	250	100	100	4	2,054.00	40	35	1	0.00	2,130.00	4a	1
22407		<sup>75</sup> Posted Speed for Designated Vehicles	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	1
22407		<sup>76</sup> Posted Speed for Designated Vehicles–In Excess of Speed Limit by 10 MPH or More	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22409		Speed Limit for Solid Tire Vehicle, 1–15 MPH Over Limit	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	1
22409		Speed Limit for Solid Tire Vehicle 16–25 MPH Over Limit	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1
22409		Speed Limit for Solid Tire Vehicle ≥ 26 MPH Over Limit	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22410		Exceeding Speed Limit for Metal Tire Vehicles	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
22413		Violation of Speed Limit Set by Local Authority for Steep Grades															4a	1
22450	(a)	Failure to Stop at Stop Sign	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
22450	(b)	<sup>77</sup> Failure to Stop at Stop Sign at Railroad Grade Crossing	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
22451	(a,b)	<sup>78</sup> Failure to Stop for Train Signals/Closed Gates	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22452	(b)	<sup>79</sup> Failure of Certain Vehicles to Stop at Railroad Crossings	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22452	(c)	<sup>80</sup> Failure of Commercial Vehicle to Stop at Railroad Crossings	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
22454	(a)	<sup>81</sup> Passing School Bus With Flashing Signals	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a	1
22455	(a)	Vending From Vehicle Without Coming to a Complete Stop or Parking the Vehicle Lawfully	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
22456	(d)	Failure to Equip Ice Cream Truck With Required Warning Sign	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
22456	(e)(1-3)	Vending From an Ice Cream Truck Under Prohibited Conditions	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22500	(i)	<sup>82</sup> Parking in Bus Loading Area	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00		0
22500	(l)	<sup>83</sup> Parking at Curb Constructed to Provide Wheelchair Accessibility	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00		0
22500	(m)	<sup>84</sup> <u>Stopping Or Parking In Designated Public Transit Bus Lane</u>	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
22500.1		Stopping in Designated Fire Lane	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22504	(a)	Unincorporated Area Stopping	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22505	(b)	Unauthorized Stopping on State Highway Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22507.8	(a-c)	<sup>85</sup> Violation of Disabled Parking Provisions	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00		0
22511.1	(a)	<sup>86</sup> Infraction Violation for Parking/Standing in Space for Charging Electric Vehicle While Not Connected for Charging Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0
22511.1	(a)	<sup>87</sup> Infraction Violation for Parking/Standing in Space for Charging Electric Vehicle While Not Connected for Charging Vehicle and Proof of Valid Zero-Emission Decal Possessed at Time of Violation But Not Displayed	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	4a	0
22511.1	(b)	<sup>88</sup> Infraction Violation for Obstructing, Blocking, or Barring Access to Space for Charging Electric Vehicle	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0
22511.1	(b)	<sup>89</sup> Infraction Violation for Obstructing, Blocking, or Barring Access to Space for Charging Electric Vehicle and Proof of Valid Zero-Emission Decal Possessed at Time of Violation But Not Displayed	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	4a	0
22516		Locking Vehicle With Person Inside Unable to Escape	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22517		Opening Door on Traffic Side When Unsafe	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22520.5	(a)	Vending on Freeway Right-of-Way Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22520.6	(a)	Unauthorized Activities at Highway Rest Area/Vista Point Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22522		<sup>90</sup> Parking Near Sidewalk Access Ramp for Disabled	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00		0
22523	(a,b)	<sup>91</sup> Vehicle Abandonment Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0
22526	(a,b)	<sup>92</sup> Blocking Intersection (Gridlock) Prohibited--A Stopping Violation Issued on a Notice to Appear	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00		0
22526	(c)	<sup>93</sup> Blocking Railroad or Rail Transit Crossing Due to Low Undercarriage (Gridlock) Prohibited--A Stopping Violation Issued on a Notice to Appear	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0
22526	(d)	Blocking Railroad or Rail Transit Crossing (Gridlock) Prohibited--A Stopping Violation Issued on a Notice to Appear	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22650		Unauthorized Removal of Unattended Vehicle From Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22651.7	(b)	Immobilization of Vehicle by Unauthorized Person	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22658	(e)(2)	Property Owner, Owner's Agent, or Lessee Causing Unlawful Removal of Vehicle Parked on Property as Permitted	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00		0
22951		Parking Lot--Street and Alley Parking	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
22952	(a,b)	Vehicle Towing or Removal From Parking Lot	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		0
23109	(c)	<sup>94</sup> Engaging in or Abetting Exhibition of Speed Prohibited	75	80	56.00	40	40	15	16	4	326.00	40	35	1	0.00	402.00		2
23111		<sup>95</sup> Throwing Lighted Substance on Highway Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0
23112	(a,b)	<sup>96</sup> Dumping Material on Highway/Right-of-Way Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00		0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
23113	(a)	<sup>97</sup> Failure to Remove Material From Highway	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
23114	(a)	Spilling Load on Highway Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23114	(b)	Aggregate Material Carried Improperly or Transported Without Required Equipment	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23114	(e)	Transporting Uncovered Aggregate Material Upon Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23114	(f)	Failure to Provide Location for Compliance With Load Covering Requirements or to Cover Load Within Required Distance	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23115	(a)	Rubbish Vehicle Cover Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
23116	(a)	Transportation of Persons Without Restraints Restricted	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
23116	(b)	Riding in or on the Back of Truck or Flatbed Motor Truck Being Driven on Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23117	(a)	<sup>98</sup> Transportation of Animals Without Restraints Restricted	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	0
23120		Side Vision Obstructed by Temple Width of Glasses	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
23123	(a)	<sup>99</sup> Driving While Using a Wireless Telephone Not Configured for Hands-free Use	20	20	14.00	10	10	4	4	4	86.00	40	35	1	0.00	162.00	4a	0
23123.5	(a)	<u>Driving While Using a Wireless Device to Send, Read, or Write Text Communication Unless the Device Is Used in a Hands-free and Voice-operated Manner</u>	<u>20</u>	<u>20</u>	<u>14.00</u>	<u>10</u>	<u>10</u>	<u>4</u>	<u>4</u>	<u>4</u>	<u>86.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>162.00</u>	<u>4a</u>	<u>0</u>
23124	(b)	<sup>100</sup> Driving While a Minor and Using a Wireless Telephone or Electronic Wireless Communications Device	20	20	14.00	10	10	4	4	4	86.00	40	35	1	0.00	162.00	4a	0
23125	(a)	Driving School Bus or Transit Vehicle While Using a Wireless Phone	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
23128	(a)	Snow Mobile—Operation on Highway Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23128	(b-d)	Snow Mobile—Negligent Operation, Pursuing Game, or Trespassing Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23129		Unobstructed Camper Exit Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
23135		<sup>101</sup> Operation of Modified Motorized Bicycle Restricted	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a	0
23136	(a)	Minor (Under 21) Driving With Blood Alcohol Level of .01 or Greater	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23140	(a)	<sup>102</sup> Minor (Under 21) Driving With Blood Alcohol Level of .05 or Greater	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	2
23154	(a)	Driving With Blood Alcohol Level of .01 or Greater While on Probation for Violation of VC 23152 or VC 23153	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23220	(a)	Drinking Alcoholic Beverage While Driving Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	1
23221	(a)	Drinking Alcoholic Beverage by Driver Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23221	(b)	Drinking Alcoholic Beverage by Passenger Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23222	(a)	Possession of Open Container While Driving Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	1
23222	(b)	<sup>103</sup> Possession of Marijuana by Driver	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4a	1
23223	(a)	<sup>104</sup> Possession of Open Container by Driver Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23223	(b)	Possession of Open Container by Passenger Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23225	(a)(1)	<sup>105</sup> Storage of Open Container Restricted	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23226	(a)	Storage by Driver of Open Container in Passenger Compartment Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23226	(b)	Storage by Passenger of Open Container in Passenger Compartment Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
23270	(a)	Unauthorized Towing on Bridge Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
23270	(b)	Exceeding Maximum Towing Fee Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23302	(a)(1)	Refusal to Pay Toll Charge Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23302	(a)(2)	Unauthorized Placement of Toll Transponder	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
23302	(a)(3)	Unauthorized Placement of Toll Transponder for Motorcycle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
23302	(b)	Failure to Display Transponder or Toll Device on Vehicular Crossing or Toll Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23302	(c)	Failure to Possess Money, Transponder, or Toll Device, or to Have License Plates Attached as Required on Vehicular Crossing or Toll Highway	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23302	(d)	Failure to Possess Transponder or Toll Device as Required on Vehicular Crossing or Toll Highway With Pay-by-Plate Payment	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23330	(a,d)	Unauthorized Use of Vehicle Crossing—Animals/Vehicles	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23330	(b)	Unauthorized Use of Vehicle Crossing—Bicycles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
23330	(c)	Unauthorized Use of Vehicle Crossing— Overwidth Vehicles	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23331		Unauthorized Use of Vehicle Crossing— Pedestrians	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
23333		<sup>106</sup> Vehicular Crossing—Unauthorized Stopping or Standing	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
23336		<sup>107</sup> Failure to Obey Posted Signs on Vehicle Crossings	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
23576	(a,b)	Driving Employer's Vehicle Without Notice of Ignition Interlock Device Restriction as Required by VC 23575	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24002	(a)	Unlawful to Operate Unsafe Vehicle—Safety Hazard	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
24002	(b)	A Unlawful to Operate Vehicle Not Equipped as Provided	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
24002	(b)	B Unlawful to Operate Vehicle Not Equipped as Provided	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24003		A Vehicle With Unauthorized Lamps	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24003		B Vehicle With Unauthorized Lamps	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24004		Unlawful Operation After Notice of Unsafe Condition	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
24005		Sale or Transfer of Unlawful Equipment w/ Knowledge That Equipment Will be Used or Installed in a Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24005.5		Sale of Unapproved Materials for Use in Strapping Regulated Loads	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24006		Sale of New Motor Vehicle Equipment Without Required Trademarks or Designations	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24007	(a,b)	Sale by Retailer of Vehicle Failing to Qualify for Certificate of Compliance	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24007.2		Failure to Install Exhaust-Control Device Free of Charge to Low-Income Senior Citizen as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24007.5	(a)(1)	Sale by Auctioneer or Public Agency of Vehicle Failing to Qualify for Certificate of Compliance	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24007.5	(b)	Failure of Consignor to Provide Certificate of Compliance to Purchaser of Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24007.5	(g)	Failure of Auctioneer to Certify Compliance With DMV Standards and Deliver Bill of Sale	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24008		A Modification of Vehicle Road Clearance Restricted	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24008		B Modification of Vehicle Road Clearance Restricted	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24008.5	(a)	A Maximum Frame Height Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24008.5	(a)	B Maximum Frame Height Defined	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24009		Sale of New Truck, Tractor, or Bus Without Indication of Manufacturer's Name and Gross Vehicle Weight Rating as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24010		Vehicle Renter Responsibility	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
24011	(a,b)	Sale of Vehicle or Equipment Regulated by Federal Safety Standards Without Certification of Vehicle or Equipment Compliance	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24012		A Failure to Comply With CHP Lighting and Mounting Specifications	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24012		B Failure to Comply With CHP Lighting and Mounting Specifications	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
24013		Failure to Disclose Minimum Octane Number Upon Sale of New Motor Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24013.5		Failure to Disclose Required Information Upon Sale of New Light Duty Truck	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24014	(a)	Failure to Disclose Required Pricing Information Prior to Display or Sale of New Motorcycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24015	(a)	A Failure of Motorized Bicycle Equipment to Comply With Federal Safety Standards	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24015	(a)	B Failure of Motorized Bicycle Equipment to Comply With Federal Safety Standards	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24015	(b)	A Use of Motorized Bicycle on Highway Without Mirror, Horn, or Muffler as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24015	(b)	B Use of Motorized Bicycle on Highway Without Mirror, Horn, or Muffler as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24016	(a)(2)	Illegal Operation of Motor on Electric Bicycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24016	(a)(2)	Illegal Operation of Motor on Electric Bicycle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24016	(d)	Illegal Modification of Electric Bicycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24016	(d)	Illegal Modification of Electric Bicycle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24017	A	Maintenance of Transit Bus Speedometer Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24017	B	Maintenance of Transit Bus Speedometer Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24250	A	Lighting Equipment to Be Lighted During Darkness	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
24250	B	Lighting Equipment to Be Lighted During Darkness	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24252	(a-c)	A Maintenance of Lamps and Devices Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24252	(a-c)	B Maintenance of Lamps and Devices Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24253	(a)	A Battery Requirements for Vehicle–Lighting Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24253	(a)	B Battery Requirements for Vehicle–Lighting Equipment	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24253	(b)	A Battery Requirements for Motorcycle–Lighting Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24253	(b)	B Battery Requirements for Motorcycle–Lighting Equipment	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24255	(a,c)	A Infrared Lighting System Equipment Violation	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24255	(a,c)	B Infrared Lighting System Equipment Violation	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24255	(b)	A Operation of Infrared Lighting System Without Use of Headlights	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
24255	(b)	B Operation of Infrared Lighting System Without Use of Headlights	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24400	(a)	A Headlamp Equipment Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24400	(a)	B Headlamp Equipment Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24400	(b)	A Failure to Operate Headlamps as Required During Darkness or Inclement Weather	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
24400	(b)	B Failure to Operate Headlamps as Required During Darkness or Inclement Weather	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24401	A	Failure to Dim Lights While Vehicle Is Parked or Standing on a Public Highway	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24401	B	Failure to Dim Lights While Vehicle Is Parked or Standing on a Public Highway	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24402	(a,b)	A Auxiliary Driving and Passing Lamps Specifications	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24402	(a,b)	B Auxiliary Driving and Passing Lamps Specifications	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
24403	(a)	A Maximum Fog Lamps Not to Be Used in Place of Headlamps	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
24403	(a)	B Maximum Fog Lamps Not to Be Used in Place of Headlamps	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0

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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
24403	(b)	A	Fog Lamps on Vehicle Improperly Mounted or Aimed	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24403	(b)	B	Fog Lamps on Vehicle Improperly Mounted or Aimed	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24403	(c)	A	Fog Lamps on Motorcycle Improperly Mounted or Aimed	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24403	(c)	B	Fog Lamps on Motorcycle Improperly Mounted or Aimed	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24404	(a,b)	A	Spotlamps--Number and Wattage Specified	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24404	(a,b)	B	Spotlamps--Number and Wattage Specified	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24404	(c,e)	A	Spotlamps--Direction Defined	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24404	(c,e)	B	Spotlamps--Direction Defined	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24405	(a)	A	Maximum Number of Lamps Allowed to Be Lighted	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24405	(a)	B	Maximum Number of Lamps Allowed to Be Lighted	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24406		A	Use of Multiple Beams Restricted	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24406		B	Use of Multiple Beams Restricted	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24407	(a)	A	High Beams--Adjustment Specified	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24407	(a)	B	High Beams--Adjustment Specified	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24407	(b)	A	Low Beams--Adjustment Specified	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24407	(b)	B	Low Beams--Adjustment Specified	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24408	(a,b)	A	High/Low Beam Indicator Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24408	(a,b)	B	High/Low Beam Indicator Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24409	(a,b)	A	Failure to Dim Multiple Beams Prohibited	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	1
24409	(a,b)	B	Failure to Dim Multiple Beams Prohibited	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24410	(a)	A	Single Beams--Adjustment/Intensity Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
24410	(a)	B	Single Beams--Adjustment/Intensity Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24411		A	Covering Auxiliary Lamps Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24411		B	Covering Auxiliary Lamps Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24600	(a-f)	A	Tail Lamp Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24600	(a-f)	B	Tail Lamp Requirements and Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24601		A	License Plate Lamp Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24601		B	License Plate Lamp Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24602	(a,b)	A	Fog Tail Lamp Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24602	(a,b)	B	Fog Tail Lamp Requirements and Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24603	(a-h) (a-i)	A	<sup>65</sup> Stop Lamp Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24603	(a-h) (a-i)	B	<sup>65</sup> Stop Lamp Requirements and Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24604	(a)	A	Lamps/Flag on Load Projecting to Rear Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		1
24604	(a)	B	Lamps/Flag on Load Projecting to Rear Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24604	(b)	A	Flag on Load Projecting to Rear Required for Wide Loads	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		1
24604	(b)	B	Flag on Load Projecting to Rear Required for Wide Loads	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24605	(a)	A	Tow Cars and Towed Vehicles--Lights Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24605	(a)	B	Tow Cars and Towed Vehicles--Lights Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24605	(b)	A	Tow Cars and Towed Vehicles--Lights Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24605	(b)	B	Tow Cars and Towed Vehicles--Lights Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24606	(a,b,d)	A	Backup Lamp Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24606	(a,b,d)	B	Backup Lamp Requirements and Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24606	(c)	A	Backup Lamps--When Not to Be Lighted	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24606	(c)	B	Backup Lamps--When Not to Be Lighted	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
24607	(a-d)	A	Reflectors Required on Rear of Vehicle	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
24607	(a-d)	B	Reflectors Required on Rear of Vehicle	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24608	(a-d)	A	Light Reflectors on Trucks/Trailers—Front and Sides	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24608	(a-d)	B	Light Reflectors on Trucks/Trailers—Front and Sides	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24609	(a)	A	Vehicle Reflector Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24609	(a)	B	Vehicle Reflector Requirements and Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24609	(b)	A	School Bus Reflector Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24609	(b)	B	School Bus Reflector Requirements and Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24610		A	Truck Reflector Requirements and Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24610		B	Truck Reflector Requirements and Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
<u>24612</u>		<u>A</u>	<u>Failure to Display Reflective Material on Trailer or Semitrailer as Required</u>	<u>25</u>	<u>30</u>	<u>21.00</u>	<u>15</u>	<u>15</u>	<u>5</u>	<u>6</u>	<u>4 121.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>197.00</u>	<u>1a</u>	<u>0</u>
<u>24612</u>		<u>B</u>	<u>Failure to Display Reflective Material on Trailer or Semitrailer as Required</u>	<u>25</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>25.00</u>	<u>4a</u>	<u>0</u>
<u>24611</u>	<u>(c)</u>	<u>A</u>	<u>Failure to Display Reflective Material on Trailer or Semitrailer as Required</u>	<u>25</u>	<u>30</u>	<u>21.00</u>	<u>15</u>	<u>15</u>	<u>5</u>	<u>6</u>	<u>4 121.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>197.00</u>	<u>1a</u>	<u>0</u>
<u>24612</u>	<u>(c)</u>	<u>B</u>	<u>108 Failure to Display Reflective Material on Trailer or Semitrailer as Required</u>	<u>25</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>25.00</u>	<u>4a</u>	<u>0</u>
24615		A	Slow-Moving Vehicle—Emblem Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24615		B	Slow-Moving Vehicle—Emblem Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24800		A	Driving With Only Parking Lights Prohibited	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00		0
24800		B	Driving With Only Parking Lights Prohibited	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24950		A	Turn Signal Device Required—Towing Trailer	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24950		B	Turn Signal Device Required—Towing Trailer	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24951	(b,c)	A	Turn Signals Required on Certain Vehicles	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24951	(b,c)	B	Turn Signals Required on Certain Vehicles	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24952		A	Visibility Requirement of Signals	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24952		B	Visibility Requirement of Signals	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
24953	(a-d)	A	Turn Signal Lamp Requirements	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
24953	(a-d)	B	Turn Signal Lamp Requirements	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25100	(a-c, e,f)	A	Clearance and Side Marker Lamp Requirements	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00		0
25100	(a-c, e,f)	B	Clearance and Side Marker Lamp Requirements	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25102		A	Lamps on Sides of Vehicles—Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25102		B	Lamps on Sides of Vehicles—Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25102.5	(a)	A	Lamps on Sides of School Buses—Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25102.5	(a)	B	Lamps on Sides of School Buses—Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25103	(a,b)	A	Lamp During Darkness on Load Projecting to Side	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	1
25103	(a,b)	B	Lamp During Darkness on Load Projecting to Side	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25104	(a)	A	Flag Required on Overwidth During Daylight Hours	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25104	(a)	B	Flag Required on Overwidth During Daylight Hours	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25104	(b)	A	Flag Required on Wide Load During Daylight Hours	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25104	(b)	B	Flag Required on Wide Load During Daylight Hours	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25105	(a-c)	A	Failure to Comply With Code Specifications for Courtesy Lamps, Door-Mounted Lamp, or Exterior Lamp	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25105	(a-c)	B	Failure to Comply With Code Specifications for Courtesy Lamps, Door-Mounted Lamp, or Exterior Lamp	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25106	(a,b)	A	Side, Cowl, or Fender Flaps—Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0



**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
25106	(a,b)	B	Side, Cowl, or Fender Flaps—Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25107		A	Cornering Lamps on Fenders	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25107		B	Cornering Lamps on Fenders	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25108	(a,b)	A	Pilot Indicator Specifications	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25108	(a,b)	B	Pilot Indicator Specifications	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25109		A	Running Lamps to Be Used Only When Vehicle Is Parked	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25109		B	Running Lamps to Be Used Only When Vehicle Is Parked	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25110	(b)	A	Improper Use of Utility Flood/Loading Lamps	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
25110	(b)	B	Improper Use of Utility Flood/Loading Lamps	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25250		A	Flashing Lights Restricted Unless Otherwise Permitted	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25250		B	Flashing Lights Restricted Unless Otherwise Permitted	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25251	(b)	A	Turn Signals Flashed as Warning When Vehicle Disabled	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25251	(b)	B	Turn Signals Flashed as Warning When Vehicle Disabled	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25251.2		A	Motorcycle Modulating Headlamp Prohibited During Darkness	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25251.2		B	Motorcycle Modulating Headlamp Prohibited During Darkness	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25252		A	Warning Lamps Required on Emergency Vehicles	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25252		B	Warning Lamps Required on Emergency Vehicles	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25252.5	(a,c)	A	Unauthorized Use of Flashing Emergency Headlamps	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25252.5	(a,c)	B	Unauthorized Use of Flashing Emergency Headlamps	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25253	(a)	A	Warning Lamps Required on Tow Trucks	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25253	(a)	B	Warning Lamps Required on Tow Trucks	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25253	(c)	A	Improper Display of Warning Lamps by Tow Truck	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	1
25253	(c)	B	Improper Display of Warning Lamps by Tow Truck	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25254		A	Improper Use of Flashing Amber Warning Lights by Peace Officer Personnel	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25254		B	Improper Use of Flashing Amber Warning Lights by Peace Officer Personnel	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25257	(a)	A	Flashing Red Signal System Required on School Bus	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25257	(a)	B	Flashing Red Signal System Required on School Bus	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25257	(b)(1)	A	School Bus Manufactured After 9-1-92 Required to Be Equipped With Stop Signal Arm	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25257	(b)(1)	B	School Bus Manufactured After 9-1-92 Required to Be Equipped With Stop Signal Arm	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25257	(b)(2)	A	School Bus Manufactured After 7-1-93 Required to Be Equipped With Flashing Amber Light System	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25257	(b)(2)	B	School Bus Manufactured After 7-1-93 Required to Be Equipped With Flashing Amber Light System	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25257.2		A	Improper Use of the Amber Light Signal System, Flashing Red Light Signal System, or Stop Signal Arm by School Bus Transporting Developmentally Disabled Persons	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
25257.2		B	Improper Use of the Amber Light Signal System, Flashing Red Light Signal System, or Stop Signal Arm by School Bus Transporting Developmentally Disabled Persons	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25260.4		A	Improper Display of Flashing Amber Warning Lights in Connection With Hazardous Waste Spill Cleanup	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
25260.4	B	Improper Display of Flashing Amber Warning Lights in Connection With Hazardous Waste Spill Cleanup	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25262	A	Use of Red Light on Armored Car Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25262	B	Use of Red Light on Armored Car Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25265	A	Improper Display of Flashing Amber Lights on Sanitary District Repair Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25265	B	Improper Display of Flashing Amber Lights on Sanitary District Repair Vehicles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25266	A	Improper Display of Flashing Amber Warning Lights by State-Owned Vehicles Engaged in Aqueduct, Levee, or Stream Measurement Work	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25266	B	Improper Display of Flashing Amber Warning Lights by State-Owned Vehicles Engaged in Aqueduct, Levee, or Stream Measurement Work	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25268	A	Use of Flashing Amber Warning Lights Restricted	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25268	B	Use of Flashing Amber Warning Lights Restricted	25	0	0.00	0	0	0	0	0	25.00	0	0	0	0.00	25.00	4a 0
25269	A	Misuse of Red Warning Light Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25269	B	Misuse of Red Warning Light Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25270	A	Improper Use of Warning Lamps on Pilot Car Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25270	B	Improper Use of Warning Lamps on Pilot Car Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25270.5	A	Improper Display of Flashing Amber Lights by Livestock-Herding Vehicles on Public Highways	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25270.5	B	Improper Display of Flashing Amber Lights by Livestock-Herding Vehicles on Public Highways	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25275	A	Improper Display of Amber Flashing Lights on Truck Tractor in the Absence of Unusual Traffic Hazard	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25275	B	Improper Display of Amber Flashing Lights on Truck Tractor in the Absence of Unusual Traffic Hazard	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25275.5	A	Unlawful Activation of Crime Alarm Lights	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25275.5	B	Unlawful Activation of Crime Alarm Lights	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25276	(a)	A Improper Use of Warning Lamps on Vehicle for Transportation of Disabled Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25276	(a)	B Improper Use of Warning Lamps on Vehicle for Transportation of Disabled Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25300	(a)	A Warning Device on Disabled Vehicles Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25300	(a)	B Warning Device on Disabled Vehicles Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25300	(b,c,e)	A Warning Device on Disabled Vehicles Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25300	(b,c,e)	B Warning Device on Disabled Vehicles Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
<u>25300</u>	<u>(d)(2)</u>	<u>A <sup>109</sup> Display on Warning Device Near Disabled Commercial Vehicle</u>	<u>70</u>	<u>70</u>	<u>49.00</u>	<u>35</u>	<u>35</u>	<u>14</u>	<u>14</u>	<u>4</u>	<u>291.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>367.00</u>	<u>3a 0</u>
<u>25300</u>	<u>(d)(2)</u>	<u>B Display on Warning Device Near Disabled Commercial Vehicle</u>	<u>25</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>25.00</u>	<u>4a 0</u>
<u>25300</u>	<u>(d)(3)</u>	<u>A <sup>110</sup> Placement and Display of Warning Device Near Disabled Commercial Vehicle</u>	<u>70</u>	<u>70</u>	<u>49.00</u>	<u>35</u>	<u>35</u>	<u>14</u>	<u>14</u>	<u>4</u>	<u>291.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>367.00</u>	<u>3a 0</u>
<u>25300</u>	<u>(d)(4)</u>	<u>A <sup>111</sup> Use of Flame Producing Emergency Signal Near Vehicles Transporting Explosives, Flammable Liquid, or Gas</u>	<u>70</u>	<u>70</u>	<u>49.00</u>	<u>35</u>	<u>35</u>	<u>14</u>	<u>14</u>	<u>4</u>	<u>291.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>367.00</u>	<u>3a 0</u>
25301	(a,b)	A Display of Warning Devices on Utility Vehicles Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25301	(a,b)	B Display of Warning Devices on Utility Vehicles Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
25305	(a-c)	A Use of Fusees Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
25305	(a-c)	B Use of Fusees Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
25350	A	Noncompliance With Vehicle Code Standards for Illuminated Identification Signs	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25350	B	Noncompliance With Vehicle Code Standards for Illuminated Identification Signs	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25351	(a-d) A	Identification Lamp Specifications and Restrictions	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25351	(a-d) B	Identification Lamp Specifications and Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25352	(a) A	Use of Unauthorized Device Affecting Traffic Signals	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25352	(a) B	Use of Unauthorized Device Affecting Traffic Signals	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25352	(b) A	Unauthorized Use of Device Affecting Traffic Signals	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25352	(b) B	Unauthorized Use of Device Affecting Traffic Signals	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25352	(c) A	Failure to Give Emergency Vehicles Priority in Changing Traffic Control Signals	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
25352	(c) B	Failure to Give Emergency Vehicles Priority in Changing Traffic Control Signals	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25353	A	Violation of Provisions for Transit Bus Illuminated Signs	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25353	B	Violation of Provisions for Transit Bus Illuminated Signs	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25400	(a-d) A	Specifications for Use of Diffused Light	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25400	(a-d) B	Specifications for Use of Diffused Light	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25401	A	Diffused Lights Resembling Signs Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25401	B	Diffused Lights Resembling Signs Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25452	A	Glaring Acetylene Lamps Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25452	B	Glaring Acetylene Lamps Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25500	(a) A	Use of Reflectoring Material Restricted	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25500	(a) B	Use of Reflectoring Material Restricted	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25650	A	Motorcycle Headlight Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25650	B	Motorcycle Headlight Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25650.5	A	Headlight Equipment for Post-1978 Motorcycles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25650.5	B	Headlight Equipment for Post-1978 Motorcycles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25651	(a,c) A	Headlamp Requirements on Motor-Driven Cycles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25651	(a,c) B	Headlamp Requirements on Motor-Driven Cycles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25803	(a,b) A	Lamp/Reflector Requirements—Certain Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25803	(a,b) B	Lamp/Reflector Requirements—Certain Vehicles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25803	(c) A	Lamp/Reflector/Flag Requirements—Load in Excess of 100-Inch Outside Width	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25803	(c) B	Lamp/Reflector/Flag Requirements—Load in Excess of 100-Inch Outside Width	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25805	A	Lamps on Forklift Trucks Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25805	B	Lamps on Forklift Trucks Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25950	(a,b) A	Color Requirements of Lights Visible to Front and Rear	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25950	(a,b) B	Color Requirements of Lights Visible to Front and Rear	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25951	A	Lamps Over 300 Candlepower—Restrictions	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25951	B	Lamps Over 300 Candlepower—Restrictions	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
25952	(a,b) A	Lamps and Reflectors Mounted on Loads Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
25952	(a,b) B	Lamps and Reflectors Mounted on Loads Specified	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26100	(a) A	Sale of Noncompliant Vehicle Equipment/Device	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26100	(b) A	Use or Operation of Vehicle With Noncompliant Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points	
26100	(b)	B	Use or Operation of Vehicle With Noncompliant Equipment	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26101	(a)	A	Sale of Device Intended to Modify Vehicle Lighting or Equipment Performance to Be Noncompliant	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26101	(b)	A	Use or Operation of Vehicle With Noncompliant Device Intended to Modify Lighting or Equipment Performance	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26101	(b)	B	Use or Operation of Vehicle With Noncompliant Device Intended to Modify Lighting or Equipment Performance	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26301		A	Power Brakes Required on Vehicle Over 14,000 Pounds	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26301		B	Power Brakes Required on Vehicle Over 14,000 Pounds	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26301.5		A	Noncompliant Emergency Brake System	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26301.5		B	Noncompliant Emergency Brake System	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26302	(a-d)	A	Brake Requirements on Trailer Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26302	(a-d)	B	Brake Requirements on Trailer Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26303		A	Brake Requirements on Trailer Coaches/Camp Trailers	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26303		B	Brake Requirements on Trailer Coaches/Camp Trailers	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26304	(a,b)	A	Breakaway Device Required on Certain Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26304	(a,b)	B	Breakaway Device Required on Certain Vehicles	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26307		A	Unlawful Towing of Forklift Lacking the Required Brakes	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26307		B	Unlawful Towing of Forklift Lacking the Required Brakes	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26311	(a)	A	Service Brakes Required--All Wheels on Certain Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26311	(a)	B	Service Brakes Required--All Wheels on Certain Vehicles	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26311	(b)	A	Service Brakes for Adverse Road Conditions Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26311	(b)	B	Service Brakes for Adverse Road Conditions Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26311	(c)	A	Service Brake Required--Stopping Distance As Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26311	(c)	B	Service Brake Required--Stopping Distance As Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26450		A	Required Brake Systems Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26450		B	Required Brake Systems Defined	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26451	(a-c)	A	Parking Brake Requirements Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26451	(a-c)	B	Parking Brake Requirements Defined	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26452		A	Adequate Brakes After Engine Failure Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26452		B	Adequate Brakes After Engine Failure Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26453		A	Condition of Brakes to Be Maintained	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26453		B	Condition of Brakes to Be Maintained	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26454	(a,b)	A	Control and Stopping Requirements Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26454	(a,b)	B	Control and Stopping Requirements Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26456		A	Tests of Brake Performance Prohibited Over 25 MPH	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
26456		B	Tests of Brake Performance Prohibited Over 25 MPH	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26457		A	Stopping Ability of Certain Vehicles Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26457		B	Stopping Ability of Certain Vehicles Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26458	(a)	A	Braking System Required for Certain Vehicles/Combinations	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26458	(a)	B	Braking System Required for Certain Vehicles/Combinations	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26458.5		A	Unlawful Use of Secondary Brake Control in Absence of Service Brake System Failure	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
26458.5		B	Unlawful Use of Secondary Brake Control in Absence of Service Brake System Failure	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0	
26502	(a)	A	Airbrake Requirements Specified	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
26502	(a)	B	Airbrake Requirements Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26503		A	Airbrake Safety Valve to Be Maintained in Good Condition	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26503		B	Airbrake Safety Valve to Be Maintained in Good Condition	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26504		A	Failure to Comply With CHP Air Pressure Standards for Vehicles Equipped With Air Brakes	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26504		B	Failure to Comply With CHP Air Pressure Standards for Vehicles Equipped With Air Brakes	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26505		A	Pressure Gauge Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26505		B	Pressure Gauge Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26506	(a)	A	Air Pressure Warning Device Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26506	(a)	B	Air Pressure Warning Device Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26507		A	Check Valve Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26507		B	Check Valve Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26508	(a-c, e-k,o)	A	Compressed Air Brake System Requirements Specified	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26508	(a-c, e-k,o)	B	Compressed Air Brake System Requirements Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26520		A	Vacuum Gauge Required to Be Visible and Accurate at All Times	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26520		B	Vacuum Gauge Required to Be Visible and Accurate at All Times	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26521		A	Audible/Visible Power Brake System Warning Device Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26521		B	Audible/Visible Power Brake System Warning Device Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26522		A	Check Valve Required on Vacuum-Assisted Power Brake Systems	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
26522		B	Check Valve Required on Vacuum-Assisted Power Brake Systems	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26700	(a)	A	Adequate Windshield Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00		1 0
26700	(a)	B	Adequate Windshield Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26701	(a-e)	A	Safety Glazing Material Requirements Specified	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26701	(a-e)	B	Safety Glazing Material Requirements Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26703	(a,b)	A	Specifications for Replacement of Safety Glazing Materials	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26703	(a,b)	B	Specifications for Replacement of Safety Glazing Materials	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26705		A	Sale of Motorcycle Windshield Without Safety Glazing Material	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26705		B	Sale of Motorcycle Windshield Without Safety Glazing Material	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26706	(a,b)	A	Self-Operating Windshield Wiper Required	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00		1 0
26706	(a,b)	B	Self-Operating Windshield Wiper Required	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26707		A	Condition/Use of Windshield Wipers to Be Maintained	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26707		B	Condition/Use of Windshield Wipers to Be Maintained	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26708	(a)(1)	A	Unlawful Material on Vehicle Windshield/ Windows	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26708	(a)(1)	B	Unlawful Material on Vehicle Windshield/ Windows	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26708	(a)(2)	A	Unlawful Material on Vehicle Windshield/Windows Obstructing or Reducing View of Driver	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26708	(a)(2)	B	Unlawful Material on Vehicle Windshield/Windows Obstructing or Reducing View of Driver	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26708.2		A	Use of Unauthorized Sun Screening Devices	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26708.2		B	Use of Unauthorized Sun Screening Devices	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26708.5	(a)	A	Application of Material to Windows Restricted	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26708.5	(a)	B	Application of Material to Windows Restricted	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
26709	(a)	A	Rearview Mirrors Required/One on Left Side	25	30	21.00	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
26709	(a)	B	Rearview Mirrors Required/One on Left Side	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
26709	(b)	A	Two Side Rearview Mirrors Required on Certain Vehicles	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
26709	(b)	B	Two Side Rearview Mirrors Required on Certain Vehicles	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
26710		A	Defective Windshield/Rear Window Glass—Correction Required Within 48 Hours of Citation Issuance	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
26710		B	Defective Windshield/Rear Window Glass—Correction Required Within 48 Hours of Citation Issuance	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
26711		A	Failure to Provide Eyeshades to Bus or Trolley Drivers	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
26711		B	Failure to Provide Eyeshades to Bus or Trolley Drivers	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
26712		A	Adequate Defroster Required on For-Hire Vehicles	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
26712		B	Adequate Defroster Required on For-Hire Vehicles	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27000	(a)	A	Adequate Horn Required	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27000	(a)	B	Adequate Horn Required	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27000	(b)	A	<sup>112</sup> Backing Alarm Required on Refuse or Garbage Trucks	150	150	105.00	75	75	30	30	4 619.00	40	35	1	0.00	695.00	4a	0
27000	(b)	B	Backing Alarm Required on Refuse or Garbage Trucks	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27000	(c)	A	<sup>113</sup> Rear View Camera Required for Refuse or Garbage Truck	150	150	105.00	75	75	30	30	4 619.00	40	35	1	0.00	695.00	4a	0
27000	(c)	B	Rear View Camera Required for Refuse or Garbage Truck	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27000	(d)(1)	A	Automatic Backup Alarm Required for Specified Construction Vehicles Transporting to and from a Mine or Construction Site	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27000	(d)(1)	B	Automatic Backup Alarm Required for Specified Construction Vehicles Transporting to and From a Mine or Construction Site	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27001	(a)	A	Unnecessary Use of Horn Prohibited	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
27002		A	Use of Siren by Unauthorized Personnel or in Noncompliance With CHP Standards	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
27002		B	Use of Siren by Unauthorized Personnel or in Noncompliance With CHP Standards	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27003		A	<u>Unlawful Use of Siren by Armored Car</u>	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
27007		A	<u>Use of Audible Sound System Outside of Vehicle Restricted</u>	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
27150	(a,b)	A	Adequate Muffler Required to Be Properly Maintained	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27150	(a,b)	B	<sup>114</sup> Adequate Muffler Required to Be Properly Maintained	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27150.1		A	<sup>115</sup> <u>Sale of Exhaust System Restricted</u>	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27150.3	(a)	A	<sup>116</sup> Modification of Exhaust System With a Whistle-tip	250	250	175.00	125	125	50	50	4 1,029.00	40	35	1	0.00	1,105.00	4a	0
27150.3	(a)	B	Modification of Exhaust System With a Whistle-tip	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27150.3	(b)	A	<sup>117</sup> Operation of Exhaust System With a Whistle-tip	250	250	175.00	125	125	50	50	4 1,029.00	40	35	1	0.00	1,105.00	4a	0
27150.3	(b)	B	Operation of Exhaust System With a Whistle-tip	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27150.3	(c)		<sup>118</sup> Engage in Business Installing Exhaust System Whistle-tip	1,000	1,000	700.00	500	500	200	200	4 4,104.00	40	35	1	0.00	4,180.00	4a	0
27151	(a)	A	Modification of Exhaust System Prohibited	25	30	21.00	15	15	5	6	0 117.00	40	35	1	0.00	193.00	1a	0
27151	(a)	B	<sup>119</sup> Modification of Exhaust System Prohibited	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27152		A	Exhaust Pipe Specifications	25	30	21.00	15	15	5	6	0 117.00	40	35	1	0.00	193.00	1a	0
27152		B	Exhaust Pipe Specifications	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27153		A	Excessive Smoke, Fumes, etc., Defined	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27153		B	Excessive Smoke, Fumes, etc., Defined	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27153.5	(a,b)	A	<sup>120</sup> Motor Vehicle Exhaust Standards Specified	250	250	175.00	125	125	50	50	4 1,029.00	40	35	1	0.00	1,105.00	4a	0
27153.5	(a,b)	B	Motor Vehicle Exhaust Standards Specified	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27154		A	Gases/Fumes Should Not Penetrate Cab of Vehicle	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
27154		B	Gases/Fumes Should Not Penetrate Cab of Vehicle	25	0	0.00	0	0	0	0	0 0.00	0	0	0	0.00	25.00	4a	0
27154.1	(a)	A	Opening in Floor of Vehicle Allowing Penetration of Fumes or Fire	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0

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 (Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
27154.1	(a)	B Opening in Floor of Vehicle Allowing Penetration of Fumes or Fire	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27154.1	(b)	A Floor of Vehicle Permeated with Oil	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27154.1	(b)	B Floor of Vehicle Permeated with Oil	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27155	A	Proper Fuel Tank Cap Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27155	B	Proper Fuel Tank Cap Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27156	(a,b,c, f)	<sup>121</sup> Air Pollution Control Device Required	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
27156	(a,b,c,f)	B Air Pollution Control Device Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27158		Pollutant Emission Certificate Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27158.5		Pollutant Emission Certificate Required (1955-65 Models)	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27200	(d,e)	Sale of a New Motor Vehicle Exceeding EPA's Maximum Noise Standards	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27302		Sale of Seatbelts Failing to Comply With CHP Standards	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	25.00	1a	0
27304	A	Seatbelt Not Installed in Driver Training Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27304	B	Seatbelt Not Installed in Driver Training Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27304	A	Seatbelt Not Used in Driver Training Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27304	B	Seatbelt Not Used in Driver Training Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27305	A	Safety Belts Required on Firefighting Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27305	B	Safety Belts Required on Firefighting Vehicles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27314	(a,b)	Failure to Provide Required Seatbelts Prior to Sale of Any Used Passenger Vehicle Dated 1972 to 1990	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27315	(d,e)	A <sup>122</sup> <u>Mandatory Use of Safety Belts Required</u>	20	20	14.00	10	10	4	4	4	86.00	40	35	1	0.00	162.00	4a	0
27315	(f)	A <sup>123</sup> <u>Owner to Maintain Safety Belts in Working Condition</u>	20	20	14.00	10	10	4	4	4	86.00	40	35	1	0.00	162.00	4a	0
27315	(f)	B <u>Owner to Maintain Safety Belts in Working Condition</u>	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27315.1	A	Noncompliance With CHP Seatbelt Regulations While in a Fully Enclosed Three-Wheeled Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27315.1	B	Noncompliance With CHP Seatbelt Regulations While in a Fully Enclosed Three-D926 Wheeled Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27360	(a)	A <sup>124</sup> <u>Mandatory Use of Child Passenger Restraints in Rear Seat Required for Children Under 8 as Specified</u>	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
27360.5	(a)	A <sup>125</sup> <u>Mandatory Use of Safety Belt or Child Restraint System Required for Children 8 or Older, but Under 16, as Specified</u>	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	1
27363	(b)	A <u>Transportation of Child in Case of Life-Threatening Emergency in Vehicle or Emergency Vehicle With No Child Restraint System Without Use of Seatbelt</u>	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
27363	(f)	A <u>Transportation of Child in Rear-Facing Child Passenger Restraint System in Front Seat of Vehicle With Active Frontal Airbag</u>	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	1
27363.5	(a,b)	Failure of Hospital, Clinic, or Birthing Center to Provide Information About Child Passenger Restraint Requirements and Contact Information	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
27365	(a)(1)	<sup>126</sup> Rental Agencies Required to Inform Customers About Child Restraint Requirements, Provide for Rental of Child Passenger Restraint System	100	100	70.00	50	50	20	20	4	414.00	40	35	1	0.00	490.00	4a	0
27368	A	Failure to Abide by Safety Standards and Regulations for Child Passengers in Fully Enclosed Three-Wheeled Vehicles	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
27368	B	Failure to Abide by Safety Standards and Regulations for Child Passengers in Fully Enclosed Three-Wheeled Vehicles	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27375	(a)	A <sup>127</sup> <u>Violation of Door or Window Requirement for Modified Limousine</u>	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
27375	(a)	B <sup>128</sup> <u>Violation of Door or Window Requirement for Modified Limousine</u>	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
27375	(b)	Failure of Limousine Driver to Unlock Rear Doors for Passengers to Open for Fire or Emergency	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
27375	(c)(1)	Failure of Limousine Owner or Operator to Instruct Passengers on Vehicle Features and Communication With the Driver	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
27375	(c)(2)	Failure of Limousine Owner or Operator to Disclose Whether the Limousine Meets Current Safety Requirements	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
27375	(c)(3)	Failure of Limousine Owner or Operator to Disclose Whether the Limousine Is Exempt From Safety Requirements For Emergency Escape	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	3a	0
27400	A	<u>Headsets, Ear Plugs, or Earphones In or Over Both Ears Prohibited</u>	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27425	(a)	<sup>129</sup> <u>Charter Bus Emergency Lighting</u>	70	70	49.00	35	35	14	14	3	290.00	40	35	1	0.00	70.00	3a	0
27450	(a-c)	A Noncompliance With Minimum Tire Thickness Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27450	(a-c)	B Noncompliance With Minimum Tire Thickness Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27452	A	Noncompliance With CHP Uniform Tire Thickness Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27452	B	Noncompliance With CHP Uniform Tire Thickness Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27453	A	Use of Noncompliant Dual Solid Rubber Tires	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27453	B	Use of Noncompliant Dual Solid Rubber Tires	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27454	A	Use of Tires Containing Prohibited Projections Beyond Tread of the Tire's Surface	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27454	B	Use of Tires Containing Prohibited Projections Beyond Tread of the Tire's Surface	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27455	(a)	Sale of Inner Tube That Is Noncompliant With CHP Inner Tube Standards	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27455	(b)	Installation of Inner Tube That Is Noncompliant With CHP Inner Tube Standards	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27459	A	Tire Chains or Snow Tires Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27459	B	Tire Chains or Snow Tires Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27459.5	(a,b)	Sale/Replacement of Noncompliant Tire Chains Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27460	A	Four-Wheel-Drive Vehicles With Snow Tread Tires Allowed; Chains to Be Carried	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27460	B	Four-Wheel-Drive Vehicles With Snow Tread Tires Allowed; Chains to Be Carried	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27460.5		Knowingly Selling or Offering for Sale a Recut or regrooved tire for Noncommercial Use	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27461	A	Use of Recut or Regrooved Tires Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27461	B	Use of Recut or Regrooved Tires Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27465	(a)	Inadequate Tire Tread--Sale Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27465	(b)	A Inadequate Tire Tread--Use on Highway Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27465	(b)	B Inadequate Tire Tread--Use on Highway Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27501	(a)	Sale or Installation of Nonconforming Pneumatic Tires	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27501	(b)	A Operating With Nonconforming Pneumatic Tires	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27501	(b)	B Operating With Nonconforming Pneumatic Tires	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27502		Sale of Tires That Fail to Comply With Noise Standards Articulated in VC 27503	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27600	A	Fenders and Mud Guards Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
27600	B	Fenders and Mud Guards Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
27602	(a)	A Operation of a Motor Vehicle Containing Unauthorized Video Screen or TV Monitor Within Driver's Field of Vision	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0



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27602	(a)	B Operation of a Motor Vehicle Containing Unauthorized Video Screen or TV Monitor Within Driver's Field of Vision	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27603		Noncompliance With Repainting Requirement for Sale of Former School Bus if Sold for Purpose Other Than Transporting Pupils	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27700	(a)	A Tow Truck in Violation of Equipment Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27700	(a)	B Tow Truck in Violation of Equipment Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27800		A Equipment for Motorcycle Passenger Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
27800		B Equipment for Motorcycle Passenger Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27801	(a,b)	A Required Position of Equipment on Motorcycle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
27801	(a,b)	B Required Position of Equipment on Motorcycle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27802	(a)	Failure to Label Helmets With Certification of Federal Safety Standard Compliance	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27802	(b)	Sale of Safety Helmets That Fail to Comply With California DMV Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27803	(b)	A Operating/Riding Motorcycle, Motor-Driven Cycle, or Motorized Bicycle While Not Wearing Helmet as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27803	(b)	B Operating/Riding Motorcycle, Motor-Driven Cycle, or Motorized Bicycle While Not Wearing Helmet as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27803	(c)	A Riding Motorcycle, Motor-Driven Cycle, or Motorized Bicycle as Passenger While Driver or Passenger Not Wearing Helmet as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27803	(c)	B Riding Motorcycle, Motor-Driven Cycle, or Motorized Bicycle as Passenger While Driver or Passenger Not Wearing Helmet as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27900	(a,b)	A Placards With Identifying Name Required on Both Sides of Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27900	(a,b)	B Placards With Identifying Name Required on Both Sides of Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27901		A Name and Trademark Visibility Required on For-Hire Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27901		B Name and Trademark Visibility Required on For-Hire Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27903	(a)	A Placards Indicating Type of Hazardous Cargo Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27903	(a)	B Placards Indicating Type of Hazardous Cargo Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27904		A Pilot Cars Required to Display Company Name on Both Sides of Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27904		B Pilot Cars Required to Display Company Name on Both Sides of Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27904.5		A Failure to Display Identification Sign in Pilot Car as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27904.5		B Failure to Display Identification Sign in Pilot Car as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27905		A Unauthorized Display of Sign Containing the Words "Fire" or "Fire Department"	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27905		B Unauthorized Display of Sign Containing the Words "Fire" or "Fire Department"	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27906	(a),(c)	A <u>Improper or Unauthorized Display of School Bus Sign</u>	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27906	(a),(c)	B Improper or Unauthorized Display of School Bus Sign	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27907		A Failure to Display Identification Sign in Towing Vehicle as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27907		B Failure to Display Identification Sign in Towing Vehicle as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27908		A Failure to Display Identification Sign in Taxicab as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
27908		B Failure to Display Identification Sign in Taxicab as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
27909		A Visible Signs Required on Vehicle Transporting Liquefied Petroleum or Natural Gas	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
27909	B	Visible Signs Required on Vehicle Transporting Liquefied Petroleum or Natural Gas	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28000	A	Failure to Install Required Emergency Exits in Refrigerator Vans	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28000	B	Failure to Install Required Emergency Exits in Refrigerator Vans	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28053	(b) A	Failure to Adjust Odometer or Notify of Adjustment as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28053	(b) B	Failure to Adjust Odometer or Notify of Adjustment as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28053	(c)	Odometer Notice Affixed, Removed, or Altered With Intent to Defraud	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28060	(a)	Sale of Recreational Vehicle or Camper Containing Cooking Equipment Without Fire Extinguisher	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28060	(b) A	Operation of Recreational Vehicle or Camper Containing Cooking Equipment Without Fire Extinguisher	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28060	(b) B	Operation of Recreational Vehicle or Camper Containing Cooking Equipment Without Fire Extinguisher	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28062	(a) A	Modified Limousine Not Equipped With Fire Extinguishers As Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28062	(a) B	Modified Limousine Not Equipped With Fire Extinguishers As Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28071	A	Front and Rear Bumper Required on Passenger Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28071	B	Front and Rear Bumper Required on Passenger Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28080	(a) A	Audible/Visible Camper Signaling Device Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28080	(a) B	Audible/Visible Camper Signaling Device Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28080	(b) A	Operating Camper Without Signaling Device Prohibited	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28080	(b) A	Operating Camper Without Signaling Device Prohibited	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28085	(c) A	Use of Theft Alarm That Emits the Sound of a Siren	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28085	(c) B	Use of Theft Alarm That Emits the Sound of a Siren	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28100	A	Failure to Display, or Unauthorized Display of, Red Warning Flags on Pilot Cars	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28100	B	Failure to Display, or Unauthorized Display of, Red Warning Flags on Pilot Cars	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28101	A	Noncompliance With Pilot Car Design and Equipment Requirements	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28101	B	Noncompliance With Pilot Car Design and Equipment Requirements	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28102	A	Noncompliance With Vertical Clearance Measuring Device Requirements for Pilot Cars	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28102	B	Noncompliance With Vertical Clearance Measuring Device Requirements for Pilot Cars	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28103	A	Pilot Cars Required to Have Equipment in Working Order	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28103	B	Pilot Cars Required to Have Equipment in Working Order	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
28150	(a,b) A	Equipping Vehicle With or Possession of Radar Jamming Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
28150	(a,b) B	Equipping Vehicle With or Possession of Radar Jamming Equipment	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
29001	A	Fifth Wheel Connecting Device Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
29001	B	Fifth Wheel Connecting Device Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
29002	A	Fifth Wheel Locking Device Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
29002	B	Fifth Wheel Locking Device Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
29003	(a-c) A	Drawbar, Hitch, or Coupling Must Be Secure	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
29003	(a-c) B	Drawbar, Hitch, or Coupling Must Be Secure	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
29004	(a) (1-3) A	Safety Chain Secured for Towing	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1
29004	(a) (1-3) B	Safety Chain Secured for Towing	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
29004	(b) A	Safety Connection of Insufficient Strength	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 1

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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
29004	(b)	B	Safety Connection of Insufficient Strength	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
29004	(c)	A	Safety Chain or Device With Excess Slack	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	1
29004	(c)	B	Safety Chain or Device With Excess Slack	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
29004	(d)	A	Failure to Comply With Safety Chain Requirements for Semi-trailers With Fifth Wheel Kingpin Connecting Device	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
29004	(d)	B	Failure to Comply With Safety Chain Requirements for Semi-trailers With Fifth Wheel Kingpin Connecting Device	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
29005		A	Drawbar Length Defined	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
29005		B	Drawbar Length Defined	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
29006	(a)	A	Coupling of Towed Vehicles Defined	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	1
29006	(a)	B	Coupling of Towed Vehicles Defined	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31301	(a)	A	Unlawful Transportation Through Caldecott Tunnel	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	1
31400	(a-c)	A	Equipment Required on Trucks Transporting Workers	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31400	(a-c)	B	Equipment Required on Trucks Transporting Workers	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31401	(d)	A	Rental or Use of Farm Labor Vehicle by Owner or Contractor Without CHP Inspection Per VC 31401(b)	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
31401	(d)	B	Rental or Use of Farm Labor Vehicle by Owner or Contractor Without CHP Inspection Per VC 31401(b)	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31401	(e)	A	Operation of Farm Labor Vehicle by Owner or Contractor Without CHP Inspection Certificate Per VC 31401(b)	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31401	(e)	B	Operation of Farm Labor Vehicle by Owner or Contractor Without CHP Inspection Certificate Per VC 31401(b)	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31405	(d)	A	Failure to Restrain All Passengers of Farm Labor Vehicles in Seatbelts	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31405	(d)	B	Failure to Restrain All Passengers of Farm Labor Vehicles in Seatbelts	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31406	(a)	A	Transportation of Passengers in a Farm Labor Vehicle With a Seating System That Is Noncompliant With CHP Standards	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31406	(a)	B	Transportation of Passengers in a Farm Labor Vehicle With a Seating System That Is Noncompliant With CHP Standards	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31406	(b)	A	Installation of Seat or Seating System in Farm Labor Vehicle That Is Noncompliant With CHP Standards	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31406	(b)	B	Installation of Seat or Seating System in Farm Labor Vehicle That Is Noncompliant With CHP Standards	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31407		A	Farm Labor Vehicle in Motion With Sharp Tool Unsecured or Blocking Aisle or Exit	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	1
31408		A	Failure to Light Both Headlamps on Farm Labor Vehicles During Operation	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	1
31408		B	Failure to Light Both Headlamps on Farm Labor Vehicles During Operation	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31409		A	Failure of Public Transit System Operated for Transporting Farm Workers and/or any Farm Worker Transportation Program to Comply With Farm Labor Vehicle Regulations	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	197.00	1a	0
31409		B	Failure of Public Transit System Operated for Transporting Farm Workers and/or any Farm Worker Transportation Program to Comply With Farm Labor Vehicle Regulations	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
31540	(b)	A	Regulations Governing Transportation of Tank Containers Specified	25	30	21.00	15	15	5	6	4 121.00	40	35	1	0.00	#REF!	1a	1
31540	(b)	B	Regulations Governing Transportation of Tank Containers Specified	25	0	0.00	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
34501	(c)	<sup>130</sup>	Multiple Safety Violations on Tour Bus	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	0
34501.2	(b,c)		Driving Hours and Duty Status Limitations	35	40	28.00	20	20	7	8	4 162.00	40	35	1	0.00	238.00	2a	1

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34501.4		Failure to Produce Complete Driver's Logbook for the Last 24-hour Period	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
34501.8		Failure to Display CHP Certificate of Inspection on Paratransit Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
<u>34505.8</u>	(a)	<sup>131</sup> <u>Charter Bus Trip Safety Briefing</u>	<u>70</u>	<u>70</u>	<u>49.00</u>	<u>35</u>	<u>35</u>	<u>14</u>	<u>14</u>	<u>5</u>	<u>292.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>368.00</u>	<u>3a</u>	<u>0</u>
34506.3		<sup>132</sup> Failure to Comply With Rules/Regulations--Driving Logs	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a	1
34506.3	A	Failure to Comply With Rules/ Regulations--Other Safety/Maintenance Items	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	1
34506.3	B	Failure to Comply With Rules/ Regulations--Other Safety/Maintenance Items	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a	0
34507		Display of Distinctive Identification Symbol Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
34507.5		Failure to Display Carrier Identification Number	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
34510		Display of Shipping Papers on Demand Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
34517	(a)	Operation of Commercial Vehicle From Another Country Restricted	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00	4a	0
34518	(a)	<sup>133</sup> Violation of Foreign Motor Carrier and Private Foreign Motor Carrier Registration and Operation Requirements and Limitations	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00	4a	0
34518	(b) (1-3)	<sup>134</sup> Violation of Motor Carrier Registration and Operation Requirements	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00	4a	0
35100	(a)	Outside Width of Vehicle or Load Exceeding 102 Inches	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35100.5		Operation of Cotton Module Mover in Violation of Width Standards Set by the County Board of Supervisors	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35101		Failure to Comply With CHP Width Standards of Vehicles Equipped With Pneumatic Tires	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35102		Carrying a Load of Loosely Loaded Agricultural Products on Racks More Than 120 Inches Wide	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35104	(a,b)	Special Vehicles More Than 120 Inches Wide	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35109		Motor Vehicle With Lights, Mirrors, or Other Devices Extending Beyond 10 Inches From Side of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35110		Motor Vehicle With Door Handles, Hinges, Cable Cinchers, Chain Binders, Aerodynamic Devices, and/or Placard Holders Extending Beyond 3 Inches of Side of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35111		Operating Passenger Vehicle With Load Exceeding Permissible Width Beyond Fenders	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35250		Height Limits of Vehicle/Load Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35251	(a)	Hydraulic Boom or Mast Must Be Secured in Transit	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35252	(a-c)	Failure to Use Vertical Clearance Measuring Device as Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35400	(a)	Overlength--Single Vehicle Specifications	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35400	(e)(1)	Improper or Unsafe Mounting of Bicycle on Bus	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35401	(a)	Overlength--Vehicle Combination Specifications	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35401	(b)	Overlength--Vehicle Combination Specifications	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
<u>35401.9</u>		<sup>135</sup> <u>Overlength - Driveaway-Towaway Combination</u>	<u>35</u>	<u>40</u>	<u>28.00</u>	<u>20</u>	<u>20</u>	<u>7</u>	<u>8</u>	<u>4</u>	<u>162.00</u>	<u>40</u>	<u>35</u>	<u>1</u>	<u>0.00</u>	<u>238.00</u>	<u>2a</u>	<u>0</u>
35406	(a,b)	Front Projections Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35407	(a-d)	Noncompliance With Boom and Mast Regulations	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35408		Installation of Front Bumper Projecting More Than 2 Feet Forward From Frontmost Part of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35409	(a)	Use of Dismountable Photo or Motion Picture Device Extending Over 5 Feet in Front of the Cab Structure of Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35409	(b)	Use of Unauthorized Dismountable Platform for Purpose of Making Instructional Safe Driving Motion Pictures	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
35410		Rear Projections Defined	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
35411		Noncompliance With Maximum Length and Load Standards	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
35550	(a-c)	<sup>136</sup> Maximum Weight on Single Axle or Wheels																4a 0
35551	(a,b)	<sup>137</sup> Computation of Allowable Gross Weight (Overweight)																4a 0
35551.5		<sup>138</sup> Violation of Gross Weight Computation Method Prescribed for Combinations Containing Trailer/Semitrailer by Less Than 4,500 Pounds																4a 0
35552		<sup>139</sup> Failure to Comply With Log Transportation Standards of the Christensen-Belotti Act	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
35554	(a)(1)	Weight in Excess of 20,500 Pounds on a Bus Axle																4a 0
35554	(c)	Operation of Transit Bus in Excess of Specified Weight Limit																4a 0
35554	(1,2)	Operation of Articulated or Zero-emission Transit Bus in Excess of Specified Weight Limit																4a 0
35554	(d)	Operation of Articulated or Zero-emission Transit Bus in Excess of Specified Weight Limit																4a 0
35554	(1-4)	Operation of Articulated or Zero-emission Transit Bus in Excess of Specified Weight Limit																4a 0
35554	(f)	Failure to Provide Required Information for Operation of Articulated Transit Bus	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	0.00	1,105.00		2a 0
35554	(h)	Operation of Transit Bus in Excess of Federal Weight Limit																4a 0
35554	(i)	Weight in Excess of 20,000 Pounds on One Axle Without Four Wheels																4a 0
35600		<sup>140</sup> Noncompliance With Solid Tire Gross Weight Limitation Standards by Less Than 4,501 Pounds																4a 0
35601		<sup>141</sup> Noncompliance With Metal Tire Gross Weight Limitation Standards by Less Than 4,501 Pounds																4a 0
35655	(a)	<sup>142</sup> Operation of Vehicle on Highway Containing Load Exceeding Maximum Weight Highway Is Designed to Sustain by Less Than 4,501 Pounds																4a 0
35712		<sup>143</sup> Violation of County Ordinance Prohibiting Commercial Vehicles Exceeding Certain Weight Limitations by Less Than 4,501 Pounds in Residential Area																4a 0
35753	(a)	<sup>144</sup> Operation of Vehicle Over Bridge, Causeway, Viaduct, Trestle, or Dam in Vehicle Containing Load Exceeding the Maximum Weight the Structures Will Safely Sustain by Less Than 4,501 Pounds																4a 0
35783		Failure to Present Valid Permit Upon Request	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
35783.5		Warning Signs Must Be Removed or Covered When Operating Without a Load	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00		1a 0
36300		Operating a Farm Tractor Drawing Trailer of Produce Without Valid Driver's License	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
36400		Operating Vehicle Designed Exclusively for Moving Implements of Husbandry at a Speed of More Than 35 MPH	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 1
36508		Moving New Implement of Husbandry at Speed Over 25 MPH Without "Slow Moving Vehicle Emblem" Displayed as Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
36510		Operating Implements of Husbandry Vehicles at Speed Beyond That Safely Required to Stop Within 32 Feet	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
36600		Transporting Implements of Husbandry That Exceed the Width Limitation of 120 Inches More Than 25 Miles From Their Point of Origin	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0
36605		Noncompliance With Width Limitations Imposed on Trailers and Semi-trailers Not Used in the Exclusive Transportation of Implements of Husbandry	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00		2a 0

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36606	(a)	Noncompliance With the Automatic Bale Wagon Width Limitation of 120 Inches	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
36705		Operation of Automatic Bale Wagon Exceeding 96 Inches in Width, or Carrying a Load in Excess of 100 Inches During Darkness	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 1
38020		Registration Required for Off-Highway Vehicle/Riding in Violation of Season Prohibited	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a 0
38300		Unlawful to Disobey Specified Sign, Signal, or Traffic Control Device	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
38301		<sup>145</sup> Unlawful to Violate Off-Highway Vehicle Operation Regulations	50	50	35.00	25	25	10	10	4	209.00	40	35	1	0.00	285.00	4a 0
38301.3		<sup>146</sup> Unlawful Entry of Motor Vehicle Into Federal or State Wilderness Area	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a 0
38301.5		Violation of Local Ordinance Prohibiting Entry Into Mountain Fire District	150	150	105.00	75	75	30	30	4	619.00	40	35	1	0.00	695.00	4a 0
38304.1		Knowingly Allowing Child to Operate Off-Highway Vehicle in Violation of Vehicle Code Section 38304	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a 0
38330	A	Unlawful to Operate Vehicle That Is Unsafe, Not Equipped as Required for an Off-Highway Vehicle, or Not Safely Loaded	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
38330	B	Unlawful to Operate Vehicle That Is Unsafe, Not Equipped as Required for an Off-Highway Vehicle, or Not Safely Loaded	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38375	(a)	<u>Off-Highway Motor Vehicle Equipped With Siren</u>	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38375	(b)	A Use of Siren While Driving an Off-Highway Motor Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
38375	(b)	B Use of Siren While Driving an Off-Highway Motor Vehicle	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38390	A	Operating or Maintaining in a Condition of Readiness an Off-Highway Vehicle Without Proper Emission Control Equipment	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
38390	B	Operating or Maintaining in a Condition of Readiness an Off-Highway Vehicle Without Proper Emission Control Equipment	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	0.00	4a 0
38503		Conditions of Minor Operating All-Terrain Vehicle	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
38504.1	(a)	<sup>147</sup> Allowing Child Under 14 Years of Age to Operate an All-Terrain Vehicle Without Safety Training/Supervision/Safety Certificate Required Under VC 38504	125	130	91.00	65	65	25	26	4	531.00	40	35	1	0.00	607.00	4a 0
38505	A	Operating or Riding All-Terrain Vehicle While Not Wearing Safety Helmet as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
38505	B	Operating or Riding All-Terrain Vehicle While Not Wearing Safety Helmet as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38600		Operating a Recreational Off-Highway Vehicle by Person Under 16 Years of Age That Is Unsupervised by an Authorized Adult	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0
38601	A	<sup>148</sup> Operating or Riding in Recreational Off-Highway Vehicle on Public Land by Person While Not Wearing Safety Helmet as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
38601	B	<sup>149</sup> Operating or Riding in Recreational Off-Highway Vehicle on Public Land by Person While Not Wearing Safety Helmet as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38602	A	Operating or Riding in Recreational Off-Highway Vehicle by Person While Not Wearing Safety Belt or Harness as Required	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a 0
38602	B	Operating or Riding in Recreational Off-Highway Vehicle by Person While Not Wearing Safety Belt or Harness as Required	25	0	0.00	0	0	0	0	0	0.00	0	0	0	0.00	25.00	4a 0
38603	(a)	Operating a Recreational Off-Highway Vehicle With a Model Year of 2014 or Later While Allowing a Passenger to Ride in Seat Location Not Provided by Manufacturer	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a 0

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38603	(b)	Operating a Recreational Off-Highway Vehicle With a Model Year of 2013 or Earlier While Allowing a Passenger to Ride in Seat Location That Is Not Contained Inside of the Rollover Protection Structure	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
38604	(a)	Operating a Recreational Off-Highway Vehicle While Allowing a Passenger to Ride Who Cannot Grasp Handhold When Belted or Harnessed as Required	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2a	0
38604	(c)	Recreational Off-Highway Vehicle With Handhold That Interferes With Passenger Exit From the Vehicle	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	2a	0
39002	(b)	<sup>150</sup> Illegal to Tamper With/Destroy Bicycle Identification	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
40001	(a,b)	Owner's Responsibility [Bail should be in accordance with the bail on the underlying offense.]																
40151	(a)	Failure to Bring Lighting Equipment Into Compliance or Comply With Removal Order Within 24 Hours of Inspection	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
40151	(b)	Failure to Bring Lighting Equipment Into Compliance or Comply With Removal Order Within 48 Hours of Inspection	25	30	21.00	15	15	5	6	4	121.00	40	35	1	0.00	197.00	1a	0
40508	(a,b)	<sup>151</sup> Violation of Promise to Appear, Promise to Pay	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	0
42005	(i)	<sup>152</sup> Failure to Attend Court-Ordered TVS	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	4a	0

**Notes:**

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A		Violation cited on a notice to appear as not eligible for correction. (VC 40303.5, VC 40522, and VC 40610.) A citing officer may issue a noncorrectable notice to appear for an equipment, driver's license, or registration offense that is potentially eligible for correction if the officer determines that the violation presents an immediate safety hazard, there is evidence of fraud or persistent neglect, or the violator does not agree to, or cannot, promptly correct the violation. (See California Highway Patrol v. Superior Court (2008) 158 Cal.App.4th 726 [riding a motorcycle without wearing any helmet presents an "immediate safety hazard" when an officer makes that determination and issues a noncorrectable citation].) If a citation does not indicate that an offense is eligible for correction under VC 40522, a court may presume that the offense is cited as noncorrectable. (See also id. at p. 740 [a court may infer from the type of citation issued that the officer did or did not find disqualifying circumstances].)															
B		Violation cited on a notice to appear as eligible for correction. (VC 40303.5, VC 40522, and VC 40610.) A potentially eligible equipment, driver's license, or registration offense may be cited as correctable on a notice to appear unless the citing officer determines that the violation presents an immediate safety hazard, there is evidence of fraud or persistent neglect, or the violator does not agree to, or cannot, promptly correct the violation. (See California Highway Patrol v. Superior Court (2008) 158 Cal.App.4th 726 [riding a motorcycle without wearing any helmet presents an "immediate safety hazard" when an officer makes that determination and issues a noncorrectable citation].)															
1		Per VC 28(b): "Any person failing to notify the city police department, sheriff's department, or campus police department as required by this section is guilty of an infraction, and shall be fined a minimum of \$300, and up to \$500."															
2	***																
3	***																
4		Minimum fine set by VC 42001.1.															
5		Minimum fine set by VC 42001.8. (See VC 40152 regarding proof for adjudication.)															
6		Minimum fine set by VC 42001.8. (See VC 40152 regarding proof for adjudication.)															
7		<u>Assem. Bill 516 (Stats. 2016, ch. 90).</u>															
8		<u>Assem. Bill 516 (Stats. 2016, ch. 90).</u>															
9		Per VC 4461.3, a city or county may adopt an ordinance or resolution to assess an additional penalty of \$100.															
10		Per VC 4463(e): Fine "... not less than \$100 and not more than \$250 for a first offense ..."															
11		Per VC 5201.1(d): "punishable by a fine of \$250 per item sold or per violation."															
12		Per VC 5201.1(d): "punishable by a fine of \$250 per item sold or per violation."															
13		Per VC 5201.1(d): "punishable by a fine of \$250 per item sold or per violation."															
13.5		<u>Assem. Bill 287 (Stats. 2016, ch. 682).</u>															
14		Per PC 19.8: VC 12500 charged as an infraction is subject to fine "... not to exceed \$250 ..."															
15		Per PC 19.8: VC 12500 charged as an infraction is subject to fine "... not to exceed \$250 ..."															
16		Per PC 19.8: VC 12500 charged as an infraction is subject to fine "... not to exceed \$250 ..."															
17		Per PC 19.8: VC 12500 charged as an infraction is subject to fine "... not to exceed \$250 ..."															
18		Per VC 12814.6(e)(1): "the court shall impose one of the following: (A) Not less than eight hours nor more than 16 hours of community service for a first offense ... (B) A fine of not more than \$35 for first offense ..."															
18.5		Senate Bill 1046 (Stats. 2016, ch. 783)															
19		Per VC 14601.1(e), VC 14601.1 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Per PC 19.8: VC 14601.1(a) charged as an infraction is subject to fine "... not to exceed \$250 ..."															
20		Per VC 14606(d): "operative on January 30, 2014."															
21		Per VC 14611: "a fine of not less than \$5,000 nor more than \$10,000."															
22		Per VC 15309.5(b): "A first conviction under this section is punishable as either an infraction or a misdemeanor ... A second or subsequent conviction is punishable as a misdemeanor ..."															
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24		Per VC 15309.5(b): "A first conviction under this section is punishable as either an infraction or a misdemeanor ... A second or subsequent conviction is punishable as a misdemeanor ..."															
25		VC 15620(b) permits the court to reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged and the court, instead, refers the defendant to a community education program that includes education on the dangers of leaving young children unattended in motor vehicles, and provides certification of completion. Upon completion of that program, the defendant shall provide that certification to the court.															
26		Per VC 16025(b): "... fine not to exceed \$250 ..."															



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27		Per VC 16029(a): "...fine of not less than \$100 and not more than \$200 for first conviction. Per VC 16029(e): "(1) Except as provided in this subdivision, the court shall impose a fine that is greater than the minimum fine specified in subdivision (a) or (b), and may not reduce that fine to the minimum fine authorized under those provisions, unless the defendant has presented the court with evidence of financial responsibility, as defined in Section 16020, for the vehicle. In no event may the court impose a fine that is less than the minimum specified in subdivision (a) or (b), or impose a fine that exceeds the maximum fine authorized under those subdivisions. ... (2) Notwithstanding any other provisions of law, the imposition of the fine required under subdivision (a) or (b) is mandatory upon conviction of a violation of subdivision (a) of Section 16028 and may not be waived, suspended, reduced below the minimum fines, unless the court in its discretion reduces or waives the fine based on the defendant's ability to pay."															
28		Per VC 21070: "punishable as an infraction ... ." Per VC 42001.19: "a person convicted of a violation of Section 21070 is punishable as follows: (a) For a violation involving bodily injury, by a fine of \$70."															
29		Per VC 21070: "punishable as an infraction ... ." Per VC 42001.19: "a person convicted of a violation of Section 21070 is punishable as follows: ... (b) For a violation involving great bodily injury, as defined in Section 12022.7 of the Penal Code, by a fine of \$95."															
30		<u>Assem. Bill 1943(Stats. 2016, ch. 512).</u>															
31		This code section also pertains to offenses that may be cited as a parking violation.															
32		Under VC 21212(d), a first charge under VC 21212(a) shall be dismissed when the person charged alleges in court, under oath, that the charge against the person is the first charge against that person under VC 21212(a), unless it is established in court that the charge is not the first charge against that person.															
33		Per VC 407.5: "(a) A "motorized scooter" is any two-wheeled device that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an electric motor that is capable of propelling the device with or without human propulsion. For purposes of this section, an electric personal assistive mobility device, as defined in Section 313, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, a motorized bicycle or moped, as defined in Section 406, or a toy, as defined in Section 108550 of the Health and Safety Code, is not a motorized scooter. (b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter."															
34		Per VC 407.5: "(a) A "motorized scooter" is any two-wheeled device that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an electric motor that is capable of propelling the device with or without human propulsion. For purposes of this section, an electric personal assistive mobility device, as defined in Section 313, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, a motorized bicycle or moped, as defined in Section 406, or a toy, as defined in Section 108550 of the Health and Safety Code, is not a motorized scooter. (b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter."															
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41		Per VC § 21296(c) a conviction for a violation of this section shall be punished by a fine of not more than \$250."															

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**(Vehicle Code)**

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42		Per VC § 21296(c) a conviction for a violation of this section shall be punished by a fine of not more than \$250."																
43		Per VC § 21296(c) a conviction for a violation of this section shall be punished by a fine of not more than \$250."																
44		Per VC § 21296(c) a conviction for a violation of this section shall be punished by a fine of not more than \$250."																
45		Per VC § 21296(c) a conviction for a violation of this section shall be punished by a fine of not more than \$250."																
46		Per VC 42001.15: "... fine of one hundred dollars."																
47		Per VC 42001.15: "... fine of one hundred dollars."																
48		Per VC 42001.15: "... fine of one hundred dollars."																
49		Per VC 21464: "(e) Any willful violation of subdivision (a), (b), or (c) that does not result in injury to, or the death of, a person is punishable by a fine of not more than \$5,000. ... (f) The court shall allow the offender to perform community service designated by the court in lieu of all or part of any fine imposed under this section."																
50		<u>Senate Bill 998 (Stats. 2016, ch. 716).</u>																
51		Per VC 42001.11: "fine of not less than \$100 nor more than \$150."																
52		Per VC 42001.11: "fine of not less than \$100 nor more than \$150."																
53		Per VC 21655.9(e)(2): "This section shall become inoperative on January 1, 2019, or the date federal authorization pursuant to Section 166 of Title 23 of the United States Code expires, or the date the Secretary of State receives the notice described in subdivision (i) of Section 5205.5, whichever occurs first, and, as of January 1, 2019, is repealed ..."																
54		Per VC 21712 (e): "fine of \$100" for a violation of VC 21712(c) or (d).																
55		Per VC 21712 (e): "fine of \$100" for a violation of VC 21712(c) or (d).																
56		Per VC 42001.16: "fine of \$100 ..."																
57		Per VC 21760(f): "operative on September 16, 2014."																
58		Per VC 21760(f): "operative on September 16, 2014."																
59		Per VC 21760(f): "operative on September 16, 2014."																
60		Per VC 21760(f): "operative on September 16, 2014."																
61		Per VC 21760(f): "operative on September 16, 2014."																
62		Per VC 21760(f): "operative on September 16, 2014."																
63		Per VC 42001.12: "fine of not less than \$100 ..."																
64		Per VC 42001.12: "fine of not less than \$100 ..."																
65		Per VC 21809(b): "fine of not more than \$50."																
66		Per VC 42001.17: "fine of \$100."																
67		Violation expanded to include activity on expressway. Per VC 1803(b)(6), a violation by a pedestrian or by a person on a bicycle or motorized scooter is not reportable to DMV.																
68		Violation of VC 21451(a,b), VC 21453(b), VC 21950(a), or VC 21952 and causing bodily injury. VC 21971 serves as a citing section when cited in tandem with the primary offense to charge the additional element of causing bodily injury. Per VC 42001.18: "every person convicted of an infraction for a violation of Section 21971 shall be punished as follows: (a) For the first infraction, by a fine of \$220."																
69		Per VC 22348(b)(1), a first violation is punishable by a fine "not to exceed \$500."																
70		Per VC 42000.5: "... fine not exceeding \$100 for a first conviction, except that if the person has exceeded the specified speed limit by 10 miles per hour or more, the fine shall not exceed \$250."																
71		Per VC 42000.5: "... fine not exceeding \$100 for a first conviction, except that if the person has exceeded the specified speed limit by 10 miles per hour or more, the fine shall not exceed \$250."																
72		VC 42000.5 specifies fine amounts for designated vehicles.																
73		VC 42000.5 specifies fine amounts for designated vehicles.																
74		Per VC 22406.5: "fine not less than \$500 ..."																
75		VC 42000.5 specifies fine amounts for designated vehicles.																
76		VC 42000.5 specifies fine amounts for designated vehicles.																
77		Per VC 42001.16(a)(1), for a first infraction: "fine of \$100 ..."																
78		Per VC 42001.16(a)(1), for a first infraction: "fine of \$100 ..."																
79		Per VC 42001.16(a)(1), for a first infraction: "fine of \$100 ..."																

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
**(\*See Preface, Section III) (\*\*See Preface, Section IV)**  
**(Vehicle Code)**

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
80		Per VC 42001.16(a)(1), for a first infraction: "fine of \$100 ..."															
81		Per VC 22454.5: " ... fine of not less than \$150 ..."															
82		Per VC 42001.5: "(a) . . . fine of not less than \$250. (b) No part of any fine imposed under this section may be suspended, except that the court may suspend that portion of the fine above \$100." GC 70372(b) imposes an additional state court construction penalty of \$4.50. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."															
83		Per VC 42001.5: "(a) . . . fine of not less than \$250. (b) No part of any fine imposed under this section may be suspended, except that the court may suspend that portion of the fine above															
84		<u>Senate Bill 998 (Stats. 2016, ch. 716).</u>															
86		Per VC 42001.6: "Every person convicted of an infraction for a violation of Section 22511.1 is punishable by a fine of \$100. No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above \$25 for a violation of Section 22511.1 if the person convicted possessed at the time of the offense, but failed to display, a valid zero-emission vehicle decal identification issued pursuant to subdivision (a) of Section 5205.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment." GC 70372(b) imposes an additional state court construction penalty of \$4.50 penalty. GC 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."															
87		Per VC 42001.6: "Every person convicted of an infraction for a violation of Section 22511.1 is punishable by a fine of \$100. No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above \$25 for a violation of Section 22511.1 if the person convicted possessed at the time of the offense, but failed to display, a valid zero-emission vehicle decal identification issued pursuant to subdivision (a) of Section 5205.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment." GC 70372(b) imposes an additional state court construction penalty of \$4.50 penalty. GC 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."															
88		Per VC 42001.6: "Every person convicted of an infraction for a violation of Section 22511.1 is punishable by a fine of \$100. No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above \$25 for a violation of Section 22511.1 if the person convicted possessed at the time of the offense, but failed to display, a valid zero-emission vehicle decal identification issued pursuant to subdivision (a) of Section 5205.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment." GC 70372(b) imposes an additional state court construction penalty of \$4.50 penalty. GC 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."															

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
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Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category	DMV Points
89		Per VC 42001.6: "Every person convicted of an infraction for a violation of Section 22511.1 is punishable by a fine of \$100. No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above \$25 for a violation of Section 22511.1 if the person convicted possessed at the time of the offense, but failed to display, a valid zero-emission vehicle decal identification issued pursuant to subdivision (a) of Section 5205.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment." GC 70372(b) imposes an additional state court construction penalty of \$4.50 penalty. GC 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."																
90		Per VC 42001.5: "(a) . . . fine of not less than \$250. (b) No part of any fine imposed under this section may be suspended, except the court may suspend that portion of the fine above \$100." GC 70372(b) imposes an additional state court construction penalty of \$4.50. PC 1465.6 requires imposition of an additional assessment equal to 10 percent of the fine imposed. GC 76000.3 imposes a \$3 penalty on every fine imposed for a parking infraction violation committed on or after January 1, 2011. Per GC 76000: "(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of \$2.50 shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund \$2.50. (c) The county treasurer shall deposit \$1 of every \$2.50 collected pursuant to subdivision (b) into the general fund of the county. (d) The authority to impose the \$2.50 penalty authorized by subdivision (b) shall be reduced to \$1 as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council."																
91		Per VC 22523(c): "... fine not less than \$100 ... "																
92		Per VC 42001.1: "For a first conviction, a fine of not less than \$50 nor more than \$100." These code sections also pertain to offenses that may be cited as a parking violation.																
93		Per VC 42001.16(a)(1), for a first infraction: "fine of \$100 ... "																
94		Per PC 19.8: VC 23109(c) charged as an infraction is subject to fine "... not to exceed \$250 ... "																
95		Per VC 42001.7: "... fine not less than \$100 ... ." "The court shall in addition to the fines imposed ... order the offender to pick up litter or clean up graffiti at time and place within the jurisdiction of the court ... " pursuant to VC 42001.7(b).																
96		Per VC 42001.7: "... fine not less than \$100 ... ." "The court shall in addition to the fines imposed ... order the offender to pick up litter or clean up graffiti at time and place within the jurisdiction of the court ... " pursuant to VC 42001.7(b).																
97		Per VC 42001.7: "... fine not less than \$100 ... ." "The court shall in addition to the fines imposed ... order the offender to pick up litter or clean up graffiti at time and place within the jurisdiction of the court ... " pursuant to VC 42001.7(b).																
98		Per VC 42001.4: "...fine of not less than \$50 nor more than \$100."																
99		Per VC 23123.5(d): "fine of \$20 for a first offense and \$50 for each subsequent offense."																
100		Assem. Bill 1785 (Stats. 2016, ch. 660). Per VC 23124(c): "fine of \$20 for a first offense and \$50 for each subsequent offense."																
101		Set per VC 42001.9.																
102		Per VC 42001.25: "fine of \$100 ... ." For defendants at least 18 years of age who are convicted of a first violation of VC 23140, VC 23502(a) requires a court order to attend a licensed driving-under-the-influence program.																
103		Per VC 23222(b): " ... fine of not more than \$100."																
104		Per VC 40000.20: a third or subsequent violation relating to "a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the public Utilities Code), is a misdemeanor.																
105		Per VC 40000.20: a third or subsequent violation relating to "a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the public Utilities Code), is a misdemeanor.																
106		This code section also pertains to offenses that may be cited as a parking violation.																
107		When a violation of speeding is alleged, refer to the Speed Chart.																
108		<u>Assem. Bill 2906 (Stats. 2016, ch. 208).</u>																
109		<u>Assem. Bill 2906 (Stats. 2016, ch. 208).</u>																

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
**(\*See Preface, Section III) (\*\*See Preface, Section IV)**  
**(Vehicle Code)**

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
110		<u>Assem. Bill 2906 (Stats. 2016, ch. 208).</u>															
111		<u>Assem. Bill 2906 (Stats. 2016, ch. 208).</u>															
112		<u>Per VC 42001.20(a): "... fine of \$150." Per VC 42001.20(b): a second offense within one year is punishable by "a fine not exceeding \$200." Per VC 42001.20: a violation occurring within one year of two or more prior violations is punishable by "a fine not exceeding \$250."</u>															
113		<u>Per VC 42001.20(a): "... fine of \$150." Per VC 42001.20(b): a second offense within one year is punishable by "a fine not exceeding \$200." Per VC 42001.20: a violation occurring within one year of two or more prior violations is punishable by "a fine not exceeding \$250."</u>															
114		<u>VC 27150.2 requires that a station providing referee functions under H&amp;S 44036 only issue a certificate of compliance for vehicular exhaust systems for vehicles that have received a citation for violation of VC 27150 or VC 27151.</u>															
115		<u>Per PC 19.8: VC 27150.1 charged as an infraction is subject to fine "... not to exceed \$250 ..."</u>															
116		<u>Per VC 42001(d): "... fine of \$250 ..."</u>															
117		<u>Per VC 42001(d): "... fine of \$250 ..."</u>															
118		<u>Per VC 42001(d): "... fine of \$1,000 ..."</u>															
119		<u>VC 27150.2 requires that a station providing referee functions under H&amp;S 44036 issue a certificate of compliance for vehicular exhaust systems only for vehicles that have received a citation for violation of VC 27150 or VC 27151.</u>															
120		<u>Per VC 42001.2: "... fine not less than \$250 ..."</u>															
121		<u>Per VC 42001.14: "... fine not less than \$50 or more than \$100." Per VC 27156(d): "If the court finds that a person has willfully violated this section, the court shall impose the maximum fine ... ." Per PC 7: "willfully" implies "... simply a purpose or willingness to commit the act, or make the omission referred to." Under VC 27156 (g) a notice to appear or complaint issued for violation of VC 27156 must require proof of correction pursuant to VC 40150 or proof of exemption pursuant to 40001.1 or 40002.</u>															
122		<u>Per VC 27315(h): "... fine of not more than \$20 for a first offense and \$50 for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or another court-approved program in which the proper use of safety belts is demonstrated."</u>															
123		<u>Per VC 27315(h): "... fine of not more than \$20 for a first offense and \$50 for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or another court-approved program in which the proper use of safety belts is demonstrated."</u>															
124		<u>Per VC 27360.6(a): "(1) ... a first offense is punishable by a fine of \$100, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803. (2) The court may require a defendant described under paragraph (1) to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards."</u>															
125		<u>Per VC 27360.6(a): "(1) ... a first offense is punishable by a fine of \$100, except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged, and the court, instead, refers the defendant to a community education program that includes, but is not limited to, education on the proper installation and use of a child passenger restraint system for children of all ages, and provides certification to the court of completion of that program. Upon completion of the program, the defendant shall provide proof of participation in the program. If an education program on the proper installation and use of a child passenger restraint system is not available within 50 miles of the residence of the defendant, the requirement to participate in that program shall be waived. If the fine is paid, waived, or reduced, the court shall report the conviction to the department pursuant to Section 1803. (2) The court may require a defendant described under paragraph (1) to attend an education program that includes demonstration of proper installation and use of a child passenger restraint system and provides certification to the court that the defendant has presented for inspection a child passenger restraint system that meets applicable federal safety standards."</u>															
126		<u>Set per VC 27365(c).</u>															
127		<u>Per VC 27375(a)(1)(D): For modified limousines modified prior to July 1, 2015, the requirements of VC 27375(a) apply on and after January 1, 2017. Per VC 27375(d): "(1) Except as provided in paragraph (2), subdivision (a) shall not apply to any limousine manufactured before 1970 that has an active charter-party carrier (TCP) number that was issued by the commission as of August 15, 2013. (2) Subdivision (a) shall not apply to any limousine manufactured before 1970 if it was modified after August 15, 2013."</u>															

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
**(\*See Preface, Section III) (\*\*See Preface, Section IV)**  
(Vehicle Code)

Section	Notes	Offense	Base Fine /Fee	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" ** /Fee	Category DMV Points
128		Per VC 27375(a)(1)(D): For modified limousines modified prior to July 1, 2015, the requirements of VC 27375(a) apply on and after January 1, 2017. Per VC 27375(d): "(1) Except as provided in paragraph (2), subdivision (a) shall not apply to any limousine manufactured before 1970 that has an active charter-party carrier (TCP) number that was issued by the commission as of August 15, 2013. (2) Subdivision (a) shall not apply to any limousine manufactured before 1970 if it was modified after August 15, 2013."															
129		<u>Senate Bill 247 (Stats. 2016, ch. 705).</u>															
130		<u>Senate Bill 812 (Stats. 2016, ch. 711).</u>															
131		<u>Senate Bill 247 (Stats. 2016, ch. 705).</u>															
132		Per VC 42001.3.															
133		Per VC 34518(c): "fine of \$1,000."															
134		Per VC 34518(c): "fine of \$1,000."															
135		Assem. Bill 2906 (Stats. 2016, ch. 208).															
136		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
137		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
138		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
139		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
140		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
141		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
142		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
143		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
144		Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except where the amount of excess weight is less than 4,501 pounds."															
145		Per VC 42001.10: "... fine not less than \$50 ... "															
146		Per VC 38301(b)(1), a first offense is: "punishable by a fine not exceeding \$50."															
147		Per VC 38301.3(a): A first offense is "punishable by a fine not exceeding \$150."															
148		Per VC 38504.1(b)(1): for a first conviction "... the court shall either impose a fine of \$125 or order the person to take or retake and complete an all-terrain safety training course pursuant to VC 38501."															
149		Per VC 38504.1(b)(1): for a first conviction "... the court shall either impose a fine of \$125 or order the person to take or retake and complete an all-terrain safety training course pursuant to VC 38501."															
150		For a violation of any ordinance or resolution adopted pursuant to VC 39002(a), per VC 39011 the fine shall not exceed \$10.															
151		Per PC 19.8: VC 40508 charged as an infraction is subject to a fine "... not to exceed \$250 ... ."															
152		Per PC 19.8: VC 42005 charged as an infraction is subject to a fine "... not to exceed \$250 ... ."															

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)  
**OVERWEIGHT CHART (Per VC 42030)<sup>1</sup>**

Pounds of Excess Weight	Base Fine	State PA* 10/10	County PA*/10 7.00	DNA PA* 5/10	Court Const. PA* /10 5.00	Surcharge* 20%	EMS PA* /10 2.00	EMAT PA* 4	Fine Surcharge & PA Subtotal	Court OPS 40	Conv.Assess. 1	Night Court	TAP Fee 0.00	"Total Bail" **
0–1,000	\$20	\$20	\$14.00	\$10	\$10	\$4	\$4	\$4	\$86.00	\$40	\$35	\$1	\$0.00	\$162.00
1,001–1,500	30	30	21.00	15	15	6	6	4	127.00	40	35	1	0.00	203.00
1,501–2,000	40	40	28.00	20	20	8	8	4	168.00	40	35	1	0.00	244.00
2,001–2,500	55	60	42.00	30	30	11	12	4	244.00	40	35	1	0.00	320.00
2,501–3,000	85	90	63.00	45	45	17	18	4	367.00	40	35	1	0.00	443.00
3,001–3,500	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00
3,501–4,000	125	130	91.00	65	65	25	26	4	531.00	40	35	1	0.00	607.00
4,001–4,500	145	150	105.00	75	75	29	30	4	613.00	40	35	1	0.00	689.00

**TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III(B)) (\*\*See Preface, Section IV)  
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4,501–5,000	\$175	\$180	\$126.00	\$90	\$90	\$35	\$36	\$4	\$736.00	\$40	\$30	\$1	\$0.00	\$807.00
5,001–6,000	\$0.04 each pound over limit													
6,001–7,000	0.06 each pound over limit													
7,001–8,000	0.08 each pound over limit													
8,001–10,000	0.15 each pound over limit													
10,001 and over	0.20 each pound over limit													

**Calculate Base Bail from the amount specified for over 5,001 pounds for each pound of excess weight and then calculate the Added Penalties and Surcharge to determine the Total Bail.**

<sup>1</sup> Per VC 42030(d): Court may exercise discretion with respect to the imposition of the fine under this section if any applicable local permit was obtained prior to the court hearing and, at the time of issuance of the notice to appear, the motor carrier was transporting construction equipment or materials and a valid extra-legal load permit from the Department of Transportation was in effect. Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

**WEIGHT CHART (Per VC 42030.1)<sup>1</sup>**

<b>Pounds in Excess of Declared Gross Vehicle Weight</b>	<b>Base Fine</b>	<b>State PA* 10/10</b>	<b>County PA*/10 7.00</b>	<b>DNA PA* 5/10</b>	<b>Court Facility Const. PA*/10 5.00</b>	<b>Surcharge* 20%</b>	<b>EMS PA*/10 2.00</b>	<b>EMAT PA* 4</b>	<b>Fine Surcharge &amp; PA Subtotal</b>	<b>Court OPS 40</b>	<b>Conv.Assess. 35</b>	<b>Night Court 1</b>	<b>TAP Fee 0.00</b>	<b>"Total Bail" **</b>
1,001–1,500	\$250	\$250	\$175.00	\$125	\$125	\$50	\$50	\$4	\$1,029.00	\$40	\$35	\$1	\$0.00	\$1,105.00
1,501–2,000	300	300	210.00	150	150	60	60	4	1,234.00	40	35	1	0.00	1,310.00
2,001–2,500	350	350	245.00	175	175	70	70	4	1,439.00	40	35	1	0.00	1,515.00
2,501–3,000	400	400	280.00	200	200	80	80	4	1,644.00	40	35	1	0.00	1,720.00
3,001–3,500	450	450	315.00	225	225	90	90	4	1,849.00	40	35	1	0.00	1,925.00
3,501–4,000	500	500	350.00	250	250	100	100	4	2,054.00	40	35	1	0.00	2,130.00
4,001–4,500	550	550	385.00	275	275	110	110	4	2,259.00	40	35	1	0.00	2,335.00
4,501–5,000	600	600	420.00	300	300	120	120	4	2,464.00	40	35	1	0.00	2,540.00
5,001–6,000	700	700	490.00	350	350	140	140	4	2,874.00	40	35	1	0.00	2,950.00
6,001–7,000	800	800	560.00	400	400	160	160	4	3,284.00	40	35	1	0.00	3,360.00
7,001–8,000	900	900	630.00	450	450	180	180	4	3,694.00	40	35	1	0.00	3,770.00
8,001–10,000	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	35	1	0.00	4,180.00
10,001 and over	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40	35	1	0.00	8,280.00

<sup>1</sup> VC 42030.1 establishes fines for violations of declared gross or combined gross vehicle weight limits, including VC 4000.6(d).



**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

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**SPEED CHART**  
**(FOR ALL SPEED LIMITS)**

<b>MPH Over Limit</b>	<b>Base Fine</b>	<b>State PA*</b>	<b>County PA*/10</b>	<b>DNA PA*</b>	<b>Court Facility Const. PA*/10</b>	<b>Surcharge*</b>	<b>EMS PA* /10</b>	<b>EMAT PA*</b>	<b>Fine Surcharge &amp; PA Subtotal</b>	<b>Court OPS</b>	<b>Conv.Assess.</b>	<b>Night Court</b>	<b>TAP Fee</b>	<b>"Total Bail" **</b>
		<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>35</b>	<b>1</b>	<b>0.00</b>	
1-15	\$35	\$40	\$28.00	\$20	\$20	\$7	\$8	\$4	\$162.00	\$40	\$35	\$1	\$0.00	\$238.00
16-25	\$70	\$70	\$49.00	\$35	\$35	\$14	\$14	\$4	\$291.00	\$40	\$35	\$1	\$0.00	\$367.00
26 and over	\$100	\$100	\$70.00	\$50	\$50	\$20	\$20	\$4	\$414.00	\$40	\$35	\$1	\$0.00	\$490.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA*	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>	
20	Unlawful to Make False Statements	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
31	Unlawful to Give False Information to Officer	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
1808.1 (b)	<sup>1</sup> Employer's Failure to Participate in DMV Pull-Notice System	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
1808.1 (f)	<sup>2</sup> Employment of Driver After Notice of Disqualifying Action by DMV	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
1808.45	Unauthorized Disclosure of DMV Records	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
2468 (a)	<sup>3</sup> Failure of Licensed Renderer to Keep Written Records of Inedible Kitchen Grease	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
2468 (b)	<sup>4</sup> Refusal of Licensed Renderer or Registered Transporter to Exhibit Required Record or Destruction of Required Record	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
2800 (a)	Refusal to Obey Peace Officer	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
2800 (b)(1)	Refusal to Comply With Peace Officer's Out-of-Service Order	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
2800 (b)(2)	Refusal of Driver Transporting Hazardous Materials to Comply With Peace Officer's Out-of-Service Order	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
2800 (b)(3)	Refusal of Driver of Vehicle Designed to Transport 16 or more People to Comply With Peace Officer's Out-of-Service Order	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
2800 (c)	Refusal to Comply With U.S. Secretary of DOT's Out-of-Service Order	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
2800 (d)	Refusal to Comply With Out-of-Service Order by Specified Persons	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
2800.1 (a,b)	Fleeing Peace Officer Prohibited	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
2800.2 (a)	Fleeing Peace Officer--Reckless Driving With Disregard for Safety Involved	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
2800.3	<sup>5</sup> Fleeing Peace Officer/Causing Injury	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	4	20,504.00	40	30	1	20,575.00
2800.4	<sup>6</sup> Driving Opposite to Direction of Lawfully Moving Traffic While Fleeing Peace Officer	3,000	3,000	2,100.00	1,500	1,500	600	600	4	12,304.00	40	30	1	12,375.00
2801	Refusal to Obey Firefighter Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
2803 (a)	<sup>7</sup> Refusal to Adjust Unsafe or Unlawful Load	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
2803 (b)	<sup>8</sup> Failure to Submit Weight Certificate or Bill of Lading to Officer	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
2813	Commercial Vehicle Inspection Required	25	30	21.00	15	15	5	6	4	121.00	40	30	1	192.00
4461 (b)	<sup>9</sup> Improper Use of Disabled Person Placard	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
4461 (c)	<sup>10</sup> Improper Display/Presentation of Disabled Person Placard	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
4461 (d)	<sup>11</sup> Improper Use of Special Identification Plate	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA*	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30 1</b>			
4462.5	Unlawful Display of Evidence of Registration With Intent to Avoid Compliance	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
4463 (b)(1-3)	<sup>12</sup> Unlawful Forgery, Passing, Possession, or Sale of Disabled Person Placard With Fraudulent Intent	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1			2,125.00
4463 (c)	<sup>13</sup> Unlawful Display of Forged, Counterfeit, or False Disabled Person Placard With Fraudulent Intent	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
5753 (a-d)	<sup>14</sup> Failure of Commercial Dealer to Deliver Certificate of Ownership and Registration Card to Transferee	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
5753 (f)	<sup>15</sup> Failure of Licensed Dealer Upon Written Request to Disclose Pertinent Information Regarding Payment or Documents Required for Release	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
5901 (a)	<sup>16</sup> Failure of Dealer or Lessor-Retailer to Provide Notice of Transfer to DMV Within 5 Calendar Days of Sale	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
5901 (b)	<sup>17</sup> Failure to Record Actual Mileage on DMV Notice of Transfer Form	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
5901 (c)	<sup>18</sup> Noncompliance With Mileage Recording Requirement by Person Other Than Dealer in Possession of Vehicle	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
8802	<sup>19</sup> Failure to Return Evidence of Registration to DMV Upon Cancellation, Suspension, or Revocation When Committed With Intent to Defraud	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
8804	<sup>20</sup> Failure by California Resident to Pay California Registration Fees While Registering Vehicle in a Foreign Jurisdiction and Operating Vehicle in California	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
10501 (a)	<sup>21</sup> False Report of Vehicle Theft With Intent to Deceive	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
10750 (a)	<sup>22</sup> Unauthorized Alteration of Vehicle Numbers or Identification Marks	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
10751 (a)	<sup>23</sup> Knowing Purchase, Sale, or Possession of Vehicle With Removed, Defaced, Altered, or Destroyed Registration or Identification Numbers	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
10851 (a)	<sup>24</sup> Driving or Taking Vehicle Without	1,500	1,500	1,050.00	750	750	300	300	4	6,154.00	40 30 1			6,225.00
10851.5	<sup>25</sup> Theft of Binder Chains	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1			4,175.00
10852	<sup>26</sup> Injuring or Tampering With Vehicle or Contents Without Consent of Owner	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
10853	<sup>27</sup> Climbing Onto, Attempting to Manipulate, or Tampering With Unattended Vehicle With Intent to Commit Malicious Injury, Mischief, or Crime	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1			2,125.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA*	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>	
10854	28 Tampering With, Driving, or Removing Any Part of Vehicle by Bailee	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
11500	29 Conducting Business as Automobile Dismantler Without Valid Permit/ License and Official Place of Business	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11520 (a)	30 Failure of Licensed Auto Dismantler to Provide Required Notice to DMV and DOJ Within Required Time	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
11700	31 Acting as Dealer, Remanufacturer, Manufacturer, Transporter, or	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (a-d)	32 False Advertising by Dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (e)	33 Engage in Business Without Required Bond	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (f)	34 Engage in Business Without Maintaining Established Place of Business	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (g)	35 Failure to Include Fee for Licensing and Transfer of Title as Added Cost in Selling Price	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (h)	36 Employ or Fail to Report Unlicensed Salesperson	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (i)	37 Deliver Vehicle for Operation on California Highways That Fails to Meet Code Requirements	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (j)	38 Permit or Engage in the Unauthorized Use of Special Plates	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (k)	39 Falsely Advertise That No Down Payment Is Necessary	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (l)	40 Failure to Pay Full Sales Tax Due to IRS	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (m)	41 Permit Unauthorized Use of Dealer's License by Non-dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (n)	42 Permit Unauthorized Use of Dealer's License by Non-dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (o)	43 Disconnecting or Resetting Odometer by Dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (p)	44 Acceptance of Deposit by Licensee Without Availability of Vehicle As Required	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (q)	45 Consignment of New Vehicle for Sale to Another Dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (r)	46 Display of Vehicle for Sale at Place Not Authorized by DMV for Dealer	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (s)	47 Advertisement of Vehicle by Dealer Using Photo With Different Year, Make, Make, or Model	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713 (t)	48 Failure of Dealer to Disclose in Ad Previous Use of Vehicle	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
11713.17 (a,b)	Violation by Dealer, Manufacturer, or Distributor of Requirements for Securing Front License on Vehicle	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
11725 (a)	49 Removal of Vehicle to Foreign Jurisdiction for Registration	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
11725 (b)	50 Failure to Remove License Plates From Vehicle If Known That Vehicle Is to Be Exported to Foreign Jurisdiction	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA*	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>	
11800	51 Conduct of Business as Vehicle Salesperson Without Valid License	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
12110 (a)	52 Providing or Requesting a Commission, Gift, or Compensation Consideration of Arranging or Requesting the Services of a Tow Truck	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
12110 (c)	53 Exchange of Valuable Consideration Between Towing Service or Employee of Towing Service and Repair Shop or Employee of Repair Shop for the Delivery or Arranging of Delivery of a Vehicle for Storage or Repair	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
12500 (a)	Unlawful to Drive Unless Licensed	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
12515 (b)	Minor Under 21 Employed to Drive in Interstate Commerce or Carry Hazardous Materials	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
12517 (a)(2)	54 Operation of School Bus Without Certificate in Possession While Transporting Pupils	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
12517 (b)	55 Operation of School Pupil Activity Bus Without Certificate in Possession While Transporting Pupils	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
12517.45 (a)	Unlawful Operation of Specified Vehicle Transporting Pupils	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
12519 (a)	Unlawful to Drive Without Farm Labor Vehicle License	80	80	56.00	40	40	16	16	4	332.00	40	30	1	403.00
12951 (b)	Refusal to Present License to Officer	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
13004 (a-g)	Identification Card—Unlawful Use	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
13004.1 (a)	56 Manufacture/Sale of Fraudulent ID	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
14601 (a)	57 Driving While Suspended or Revoked	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
14601.1 (a)	58 Driving While Suspended or Revoked for Offenses Not Relating to Driving Ability	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
14601.2 (a,b)	59 Driving While Suspended or Revoked for Driving Under Influence of Alcohol/Drugs	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
14601.3 (a)	60 Accumulation of Driver Record History by Habitual Traffic Offender During Period of License Suspension or After Revocation	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
14601.4 (a)	61 Causing Bodily Injury While Driving With Suspended License	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
14601.5 (a,b)	62 Driving When Privilege Suspended or Revoked for Refusing Chemical Test or Driving With Excessive Blood Alcohol	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
14602.6 (g)(4)	Knowingly Releasing Impounded Vehicle Prior to End of Impoundment Period	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40	30	1	8,275.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30 1</b>			
14604 (a)	63 Knowingly Allow Another to Drive Vehicle Without Valid Driver's	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
14610 (a)(1-8)	Unlawful Use of License Defined	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
14610.1 (a)	65 Manufacture/Sale of Fraudulent ID/Driver's License Prohibited	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
15309.5 (a)(1)	66 Sell, Offer, Distribute, or Use Crib Sheet or Device for Commercial Driver's License Examination	350	350	245.00	175	175	70	70	4	1,439.00	40 30 1			1,510.00
15309.5 (a)(2)	67 Impersonate or Allow Impersonation of Applicant for Commercial Driver's License Examination	350	350	245.00	175	175	70	70	4	1,439.00	40 30 1			1,510.00
15309.5 (a)(3)	68 Provide or Use Unauthorized Assistance During Commercial Driver's License Examination	350	350	245.00	175	175	70	70	4	1,439.00	40 30 1			1,510.00
15501	69 Presentation of False Driver's License by Minor	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
16030 (a)	70 False Evidence of Financial Responsibility	750	750	525.00	375	375	150	150	4	3,079.00	40 30 1			3,150.00
16560 (a,b)	Violation of Interstate Highway Carrier Requirements	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
20001 (a)	72 Duty to Stop When Involved in Accident With Injury or Death	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1			4,175.00
20002 (a,b)	Hit and Run—Property Damage	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
20003	73 Failure to Provide Required Information or Render Necessary	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
21200.5	Bicyclist Riding Under the Influence	150	150	105.00	75	75	30	30	4	619.00	40 30 1			690.00
21464 (d)	74 Willful Interference With Traffic Device or Willful Use, Possession, or Distribution of Traffic Interference Device That Results in Injury or Death	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	4	20,504.00	40 30 1			20,575.00
21651 (b)	75 Driving Wrong Way on Divided Highway	80	80	56.00	40	40	16	16	4	332.00	40 30 1			403.00
21651 (c)	76 Willfully Driving Wrong Way on Divided Highway and Causing Injury or Death	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1			4,175.00
21655.9 (c)	77 Operate or Own Vehicle That Displays Low-Emission Decal Not Issued for the Vehicle	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
21702 (a,b)	78 Limitation on Driving Hours	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
21713	Armored Car Without License	90	90	63.00	45	45	18	18	4	373.00	40 30 1			444.00
21963	Blind Pedestrians Right-of-Way	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1			2,125.00
22406.1	79 Maximum Speed for Commercial Vehicles—In Excess of Speed Limit by 15 MPH or More	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
22513 (a)(1)	Illegal Stop by Tow Truck on Highway	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
22513 (a)(2-4)	Failure to Possess Required Information for Stop of Tow Truck on Highway	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
22513 (b)	82 Failure to Maintain or Provide Required Information for Stop of Tow Truck on Highway	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
22513 (c)(1,2)	83 Failure to Provide Written Estimate as Required for Tow Services	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00
22513 (d)(1,3)	84 Illegal Fee Charged for Tow or Storage Services	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1			1,100.00

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			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>	
22513 (d)(4)	<sup>85</sup> Failure to Provide or Maintain Required Information for Tow or Storage Services	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
22513.1 (a)(1)	<sup>86</sup> Failure to Maintain Required Information for Tow and Storage of Vehicle	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
<u>22513.1 (b)</u>	<sup>87</sup> <u>Business Taking Possession Of A Vehicle From A Tow Truck After Hours</u>	<u>250</u>	<u>250</u>	<u>175.00</u>	<u>125</u>	<u>125</u>	<u>50</u>	<u>50</u>	<u>4</u>	<u>1,029.00</u>	<u>40</u>	<u>30</u>	<u>1</u>	<u>1,100.00</u>
22513.1 <del>(b)</del> (c)	<sup>88</sup> Failure to Maintain and Provide Required Information for Tow and Storage of Vehicle	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
22658 (g)(1)(B)	<sup>89</sup> Failure of Tow Company or Driver on Request by Owner or Owner's Agent to Release Vehicle Not Yet in Transit	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
22658 (i)(1)(B)	<sup>90</sup> Failure to Make Rate Approved by CHP Available for Inspection Within 24 Hours of Request	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
22658 (j)(2)	<sup>91</sup> Charging Excessive Rate for Towing Service or Storage	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
22658 (k)(1,2)	<sup>92</sup> Refusal of Credit Card by Storage Facility for Payment of Charges for Towed Vehicle	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
22658 (l)	<sup>93</sup> Violation by Tow Company of Requirements for Removal of Vehicle From Private Property	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
22658 (m)(1)	<sup>94</sup> Failure of Tow Company to Provide Notice of Removal of Vehicle As Required	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
23103 (a,b)	<sup>95</sup> Reckless Driving	145	150	105.00	75	75	29	30	4	613.00	40	30	1	684.00
23104 (a)	<sup>96</sup> Reckless Driving–Bodily Injury	350	350	245.00	175	175	70	70	4	1,439.00	40	30	1	1,510.00
23104 (b)	<sup>97</sup> Reckless Driving–Great Bodily Injury	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
23105 (a)	<sup>98</sup> Reckless Driving–Specific Injury	750	750	525.00	375	375	150	150	4	3,079.00	40	30	1	3,150.00
23109 (a)	<sup>99</sup> Engaging in Speed Contests Prohibited	360	360	252.00	180	180	72	72	4	1,480.00	40	30	1	1,551.00
23109 (b)	<sup>100</sup> Abetting Speed Contest Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
23109 (c)	<sup>101</sup> Engaging in or Abetting Exhibition of Speed Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
23109 (d)	<sup>102</sup> Placing Barricades or Obstructions Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
23109 (e)(2)	<sup>103</sup> Engaging in Speed Contest and Causing Bodily Injury	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
23109.1	<sup>104</sup> Engaging in Speed Contest–Specific	750	750	525.00	375	375	150	150	4	3,079.00	40	30	1	3,150.00
23110 (a)	Throwing Substance at Vehicle Prohibited	250	250	175.00	125	125	50	50	4	1,029.00	40	30	1	1,100.00
23112.5 (a)	Hazardous Materials–Notification of Agency Required	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40	30	1	8,275.00
23118 (f)(4)	Release of Impounded Vehicle by Legal Owner or Agent Prior to End	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40	30	1	8,275.00
23127	Motor Vehicle on Riding/Hiking Trails Prohibited	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
23152 (a,b)	<sup>105</sup> Driving Under Influence of Alcohol	390	390	273.00	195	195	78	78	4	1,603.00	40	30	1	1,674.00

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			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>	
23152 (c)	106 Driving While Addicted to Drug	390	390	273.00	195	195	78	78	4	1,603.00	40	30	1	1,674.00
23152 (d)	107 Driving Commercial Vehicle Under Influence of Alcohol	450	450	315.00	225	225	90	90	4	1,849.00	40	30	1	1,920.00
23152 (f)	108 Driving Under Influence of Drug	390	390	273.00	195	195	78	78	4	1,603.00	40	30	1	1,674.00
23152 (g)	109 Driving Under Influence of Alcohol and Drug	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
23153 (a,b)	110 Driving Under Influence of Alcohol While Causing Injury	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
23153 (d)	111 Driving Commercial Vehicle Under Influence of Alcohol While Causing Injury	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
<u>23153 (f)</u>	<u>112 Driving Under Influence of Drug While Causing Injury</u>	<u>500</u>	<u>500</u>	<u>350.00</u>	<u>250</u>	<u>250</u>	<u>100</u>	<u>100</u>	<u>4</u>	<u>2,054.00</u>	<u>40</u>	<u>30</u>	<u>1</u>	<u>2,125.00</u>
<u>23153 (g)</u>	<u>113 Driving Under Influence of Alcohol and Drug While Causing Injury</u>	<u>500</u>	<u>500</u>	<u>350.00</u>	<u>250</u>	<u>250</u>	<u>100</u>	<u>100</u>	<u>4</u>	<u>2,054.00</u>	<u>40</u>	<u>30</u>	<u>1</u>	<u>2,125.00</u>
23224 (a,b)	114 Possession of Alcohol by Minor Prohibited	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
23247 (a-e)	115 Unlawful to Rent/Loan Vehicle; Solicit Someone to Engage Required Interlock Device; Blow Into Device/Start; Tamper With Vehicle Requiring Interlock Device	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
23253	Failure to Obey CHP or DOT Officers at Vehicle Crossing	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
23332	Trespass on Vehicular Crossing Prohibited	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
23573 (i)	116 Willful Failure to Install Ignition Interlock Device Within Required 30 Days	500	500	350.00	250	250	100	100	4	2,054.00	40	30	1	2,125.00
24002.5 (a)	117 Unlawful Operation of a Farm Labor Vehicle	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00
24011.3 (a)	118 Passenger Vehicle Manufacturer Willfully Fails to Affix Bumper Strength Notice or Willfully Misstates Information in the Notice	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
24011.3 (c)(2)	119 Willful Defacement, Alteration, or Removal of New Vehicle Bumper Strength Notice Prior to Delivery of the Vehicle	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
27150.1	120 Sale of Exhaust Systems Restricted	50	50	35.00	25	25	10	10	4	209.00	40	30	1	280.00
<u>27317 (a)</u>	<u>121 Manufacture or Sell Counterfeit or Nonfunctioning Airbag</u>	<u>500</u>	<u>500</u>	<u>350.00</u>	<u>250</u>	<u>250</u>	<u>100</u>	<u>100</u>	<u>4</u>	<u>2,054.00</u>	<u>40</u>	<u>30</u>	<u>1</u>	<u>2,125.00</u>
<u>27317 (b)</u>	<u>122 Sell or Install Device That Disables a Vehicle's Counterfeit Airbag Indicator</u>	<u>500</u>	<u>500</u>	<u>350.00</u>	<u>250</u>	<u>250</u>	<u>100</u>	<u>100</u>	<u>4</u>	<u>2,054.00</u>	<u>40</u>	<u>30</u>	<u>1</u>	<u>2,125.00</u>
27362 (a)	123 Sale of Nonapproved Child Restraint System Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
28050	124 Advertisement, Sale, Use, or Installation of Device Causing Motor Vehicle Odometer to Register Mileage Other Than True Mileage Driven	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
28050.5	125 Operation of Motor Vehicle Knowing the Odometer Is Disconnected or Nonfunctional With Intent to Defraud	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00
28051	126 Disconnecting, Turning Back, or Resetting Odometer of Motor Vehicle	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00



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			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>	<b>40 30 1</b>		
28051.5	<sup>127</sup> Advertisement, Sale, or Use of Device Designed for Purpose of Turning Back or Resetting Odometer of Motor Vehicle to Reduce Mileage Indicated	200	200	140.00	100	100	40	40	4	824.00	40 30 1	895.00
28150 (d)	<sup>128</sup> Possession of Four or More Radar Jamming Devices	200	200	140.00	100	100	40	40	4	824.00	40 30 1	895.00
31303 (b-e)	Violating Requirements for Transportation of Hazardous Waste	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1	1,305.00
31401 (b)	Farm Labor Buses and Trucks—Inspection Required	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1	2,125.00
31401 (d)	<sup>129</sup> Willful Rental or Use by Owner or Contractor of Farm Labor Vehicle Without CHP Inspection per VC 31401(b)	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31402 (a)	<sup>130</sup> Operation of Unsafe Farm Labor Vehicle Prohibited	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31403	Mechanic Certification of Farm Labor Vehicle Required	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1	2,125.00
31602 (a-c)	Transportation of Explosives—License, Routes to Be Used, Stopping Specified	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31607 (a)	Inspection of Vehicle Required	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31609	Record of Inspection Required	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31610 (a-e)	Proper Equipment, Maintenance of Vehicle Required	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31611	Proper Maps of Route of Vehicle Required	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31612	Carry and Display Shipping Instructions	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31613	Prohibited Explosive Cargoes Defined	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31614 (a,b,d,e,h)	Transport Explosives Through Local Route; Congested Areas; With Unenclosed, Uncovered Loads; While Smoking or With Open Flame	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31614 (c,g)	Loading Explosives Without Motor Stopped, Brakes Set; Vehicle Transporting Explosives Left Unattended	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
31614 (f,i)	Driving With Explosives in Vehicle Near/Through Fires in Passenger Vehicle	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
32000.5 (a)	Hazardous Materials Transportation—Company Unlicensed	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
32000.5 (d)	Fireworks Transportation—Failure to Carry License or Present as Required	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
32001 (c)	Hazardous Material—Motor Carrier Directing Transportation Unlawfully	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
32002 (a)	Violations of Division 14.1 Regulations	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
32002 (b)	<sup>131</sup> Unlicensed Transportation of Hazardous Materials	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40 30 1	8,275.00
33000	<sup>132</sup> Violation of Shipment Regulations for the Transportation of Radioactive Materials	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00
34100	Illegal Operation of Tank Vehicle Transporting Hazardous Waste or Flammable and Combustible Liquids on a Public Highway	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40 30 1	4,175.00

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			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30 1</b>			
34501 (e)	Operation of Bus Without Current Inspection by CHP	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34501.3 (a)	<sup>133</sup> Unlawful Scheduling of Runs by Motor Carriers	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34501.12 (b)	<sup>134</sup> Unlawful Operation of Vehicle by Motor Carrier Without Submitting Required Inspection Information	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
34501.12 (d)	<sup>135</sup> Unlawful Operation of Vehicle by Motor Carrier	100	100	70.00	50	50	20	20	4	414.00	40 30 1			485.00
34505 (a-c)	<sup>136</sup> Violation of Tour Bus Inspection and Repair Requirements	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34505.5 (a-c)	<sup>137</sup> Violation of Motor Carrier Vehicle Inspection and Repair Requirements	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34505.9 (a)(4)(D)	<sup>138</sup> Violation of Intermodal Roadability Inspection Program	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (a)	<sup>139</sup> Driver's Hours of Service	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1			2,125.00
34506 (b)	<sup>140</sup> Failure to Comply With Specified Regulation of Hazardous Material Transportation	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (c)	<sup>141</sup> Failure to Comply With Specified Regulation of School Buses	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (d)	<sup>142</sup> Failure to Comply With Specified Regulation of Youth Buses	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (e)	<sup>143</sup> Failure to Comply With Specified Regulation of Tour Buses	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (f)	<sup>144</sup> Failure to Comply With Specified Regulation of Described Vehicles	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34506 (g)	<sup>145</sup> Failure to Comply With Specified Regulation of School Pupil Activity Buses	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34623 (h)	<sup>146</sup> Motor Carrier of Property Operating Vehicle While Permit Suspended	200	200	140.00	100	100	40	40	4	824.00	40 30 1			895.00
34623 (i)(1)	<sup>147</sup> Motor Carrier of Property With Suspended Permit Allowing Any Vehicles Subject to Suspension Based on Failure to Maintain to Be Operated by Another Carrier	500	500	350.00	250	250	100	100	4	2,054.00	40 30 1			2,125.00
34623 (i)(2)	<sup>148</sup> Motor Carrier of Property Knowingly Utilizing a Vehicle From a Motor Carrier Whose Permit Is Suspended Based on a Failure to Maintain Any	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1			1,305.00
35550 (a)	<sup>149</sup> Maximum Weight on Single Axle or Wheels													[See Overweight Chart]
35551 (a,b)	<sup>150</sup> Computation of Allowable Gross Weight													[See Overweight Chart]
35551.5 (b-d)	<sup>151</sup> Violation of Gross Weight Computation Method Prescribed for Combinations Containing Trailer/Semitrailer by More Than 4,500 Pounds													[See Overweight Chart]
35554 (a)(1)	<sup>152</sup> Gross Weight More Than 20,500 Pounds on Any One Axle of a Bus and More Than 4,500 Pounds Over Weight Limit													[See Overweight Chart]
35554 (c)	<sup>153</sup> Operation of Transit Bus in Excess of Federal Weight Limit and and More Than 4,500 Pounds Over Weight Limit													[See Overweight Chart]

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **	
			10/10	7.00	5/10	5.00	20%	2.00	4		40	30	1	
35600	154 Noncompliance With Solid Tire Gross Weight Limitation Standards by More Than 4,500 Pounds												[See Overweight Chart]	
35601	155 Noncompliance With Metal Tire Gross Weight Limitation Standards by More Than 4,500 Pounds												[See Overweight Chart]	
35655 (a)	156 Operation of Vehicle on Highway Containing Load Exceeding Maximum Weight Highway Is Designed to Sustain by More Than 4,500 Pounds												[See Overweight Chart]	
35712	157 Violation of County Ordinance Prohibiting Commercial Vehicles Exceeding Certain Weight Limitations by More Than 4,500 Pounds in Residential Area												[See Overweight Chart]	
35753 (a)	158 Operation of Vehicle Over Bridge, Causeway, Viaduct, Trestle, or Dam in Vehicle Containing Load Exceeding the Maximum Weight the Structures Will Safely Sustain by More Than 4,500 Pounds												[See Overweight Chart]	
35784 (a)	Failure to Obey Permit Terms and Designated Route for Extra-legal Load	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
35784 (b)	159 Violation of Special Permit	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
35784 (c)	Extra-legal Load Not on Designated Route	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
35784.5 (a)	161 Transportation of Extra-legal Load Without Permit	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
35785 (b)	Violation of Single Saw Log Hauling Speed Limit of 15 MPH Over Bridge or Causeway or 25 MPH on Highway	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
35786 (b)	162 Operation of Truck Booster Power Unit in Noncompliance With Route Specifications and Time Limitations Set by Permit	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
35790 (g)	163 Failure to Carry Appropriate Permits, Certificates, and Notices Required for Movement of Manufactured Homes	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
35790 (h)	164 Violation of Terms, Conditions, or Limitations Specified in Manufactured-Home Transportation Permits	100	100	70.00	50	50	20	20	4	414.00	40	30	1	485.00
38316 (a)	165 Reckless Driving of Off-Highway Motor Vehicle	150	150	105.00	75	75	30	30	4	619.00	40	30	1	690.00
38317	166 Reckless Driving of Off-Highway Motor Vehicle Causing Injury	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
38318 (a)	167 Throwing Substance at Off-Highway Motor Vehicle	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
38318.5	168 Malicious Removal or Alteration of Markers or Signs	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
38319	169 Operation of Off-Highway Motor Vehicle Likely to Cause Damage	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
40001 (c)	170 Violation by Employer of Out-of-Service Order	300	300	210.00	150	150	60	60	4	1,234.00	40	30	1	1,305.00
40001 (d)	171 Employer Allows, Permits, Requires, or Authorizes Driver to Operate Commercial Motor Vehicle in Violation of Railroad-Highway Grade Crossing Statute or Regulation	2,000	2,000	1,400.00	1,000	1,000	400	400	4	8,204.00	40	30	1	8,275.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA*	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS Conv.Assess.	Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30 1</b>		
40005	<sup>172</sup> Employer Undertakes Responding to Employee Driver's Citation and Inaction by Employer Results in Issuance of Warrant for Employee	200	200	140.00	100	100	40	40	4	824.00	40 30 1		895.00
40008 (a)	<sup>173</sup> Violation of Section 21701 or 21703 With Intent to Capture Physical Impression of Another Person for Commercial Purpose	750	750	525.00	375	375	150	150	4	3,079.00	40 30 1		3,150.00
40008 (a)	<sup>174</sup> Violation of Section 23103 With Intent to Capture Physical Impression of Another Person for Commercial Purpose	750	750	525.00	375	375	150	150	4	3,079.00	40 30 1		3,150.00
40008 (b)	<sup>175</sup> Violation of Section 21701 or 21703 With Intent to Capture Physical Impression of Another Person for Commercial Purpose and Causing Endangerment of Minor	1,500	1,500	1,050.00	750	750	300	300	4	6,154.00	40 30 1		6,225.00
40008 (b)	<sup>176</sup> Violation of Section 23103 With Intent to Capture Physical Impression of Another Person for Commercial Purpose and Causing Endangerment of Minor	1,500	1,500	1,050.00	750	750	300	300	4	6,154.00	40 30 1		6,225.00
40504 (b)	Signing Written Promise to Appear With False Name	250	250	175.00	125	125	50	50	4	1,029.00	40 30 1		1,100.00
40508 (a-c)	Violation of Promise to Appear, Promise to Pay	50	50	35.00	25	25	10	10	4	209.00	40 30 1		280.00
40519 (c)	<sup>177</sup> Failure to Appear at Time of Trial After Pleading Not Guilty in Writing	50	50	35.00	25	25	10	10	4	209.00	40 30 1		280.00
40614	Use of Fictitious Name Prohibited	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
40616	Violation of Promise to Correct	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
42005 (i)	Failure to Attend Court-Ordered TVS	75	80	56.00	40	40	15	16	4	326.00	40 30 1		397.00

### (California Code of Regulations, Title 13, Article 3)

#### HAZARDOUS MATERIALS TRANSPORTATION

1160.4 (e)	Inspection by Department	200	200	140.00	100	100	40	40	4	824.00	40 30 1		895.00
1160.4 (g)	Hazardous Material Transportation License Not in Vehicle	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1161 (a,b)	Shipping Papers	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1162 (a,c)	Placards	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1162.1	Fire Extinguishers	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1163 (a,b)	Shipment Preparation, Unauthorized Packing	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1163 (d)	Leaking Package	200	200	140.00	100	100	40	40	4	824.00	40 30 1		895.00
1163 (e)	Maintenance of Containers	100	100	70.00	50	50	20	20	4	414.00	40 30 1		485.00
1163.1	Prohibited Transportation	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1		1,305.00
1164	Vehicle Loading	200	200	140.00	100	100	40	40	4	824.00	40 30 1		895.00
1166	Reporting of Accident	300	300	210.00	150	150	60	60	4	1,234.00	40 30 1		1,305.00

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA* & PA Subtotal	Fine Surcharge	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		10/10		7.00	5/10	5.00	20%	2.00	4		40	30	1

### Notes

- 1 Per VC 40000.6(a): "a misdemeanor and not an infraction."
- 2 Per VC 40000.6(b): "a misdemeanor and not an infraction." Per VC 1808.1(f): "punished by confinement in a county jail for not more than six months, by a fine of not more than \$1,000, or by both that confinement and fine."
- 3 Per VC 2468(c)(1): "For a first offense, by a fine of not less than \$1,000 ... ."
- 4 Per VC 2468(c)(1): "For a first offense, by a fine of not less than \$1,000 ... ."
- 5 Per VC 2800.3(a): "fine of not less than \$2,000 nor more than \$10,000 ... ."
- 6 Fine "not less than \$1,000 nor more than \$10,000."
- 7 Per VC 40000.7: "Violation ... a misdemeanor and not an infraction."
- 8 Per VC 40000.7: "Violation ... a misdemeanor and not an infraction."
- 9 Per VC 4461.3 a city or county may adopt an additional penalty of \$100. PC 1465.6 requires imposition of an assessment equal to 10 percent of the fine imposed.
- 10 Per VC 4461.3 a city or county may adopt an additional penalty of \$100. PC 1465.6 requires imposition of an assessment equal to 10 percent of the fine imposed. VC 4461.5 authorizes a civil penalty of not more than \$1,500 in addition to or instead of any fine imposed.
- 11 Per VC 4461.3 a city or county may adopt an additional penalty of \$100. PC 1465.6 requires imposition of an assessment equal to 10 percent of the fine imposed. VC 4461.5 authorizes a civil penalty of not more than \$1,500 in addition to or instead of any fine imposed.
- 12 VC 4463.3 authorizes a civil penalty of not more than \$1,500 in addition to or instead of any fine imposed. Per VC 4463(b): "A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in a county jail for six months, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000), or both that fine and imprisonment, which penalty shall not be suspended: (1) Forges, counterfeits, or falsifies a disabled person placard or a comparable placard relating to parking privileges for disabled persons provided for by a foreign jurisdiction, or forges, counterfeits, or falsifies a disabled person placard with intent to represent it as issued by the department. (2) Passes, or attempts to pass, as true and genuine, a false, forged, or counterfeit disabled person placard knowing it to be false, forged, or counterfeited. (3) Acquires, possesses, sells, or offers for sale a genuine or counterfeit disabled person placard."
- 13 Per VC 4463(c): "A person who, with fraudulent intent, displays or causes or permits to be displayed a forged, counterfeited, or false disabled person placard, ... is guilty of a misdemeanor punishable by imprisonment in a county jail for six months, a fine of not less than \$250 and not more than \$1,000, or both that fine and imprisonment, which penalty shall not be suspended." PC 1465.6 requires imposition of an assessment equal to 10 percent of the fine imposed.
- 14 Per VC 40000.7: "Violation ... a misdemeanor and not an infraction ... when committed by a dealer or any person while a dealer within the last 12 months." Per VC 5753(e), failure of licensed dealer to comply with subdivisions (c) and (d) shall result in payment to the transferee of \$25 per day for each day that the requirements of subdivisions (c) and (d) remain unsatisfied, not to exceed a maximum payment of \$2,500. If the legal owner or lessor fails to pay this amount within 60 days following written demand by the transferee, the amount shall be trebled, not to exceed a maximum payment of \$7,500, and the transferee shall be entitled to costs and reasonable attorney's fees incurred in any court action brought to collect the payment. The right to recover these payments is cumulative with and is not in substitution or derogation of any remedy otherwise available at law or equity.
- 15 Per VC 10851(a): " ... punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than \$5,000, or by both the fine and imprisonment."
- 16 Per VC 40000.7: "Violation ... a misdemeanor, and not an infraction ... when committed by a dealer or any person while a dealer within the last 12 months."
- 17 Per VC 40000.7: "Violation ... a misdemeanor, and not an infraction ... when committed by a dealer or any person while a dealer within the last 12 months."

**TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	EMAT PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>
18	Per VC 40000.7: "Violation ... a misdemeanor, and not an infraction ... when committed by a dealer or any person while a dealer within the last 12 months."												
19	Per VC 40000.7: "Violation ... a misdemeanor, and not an infraction ... when committed by a dealer or any person while a dealer within the last 12 months."												
20	Per VC 40000.7: "Violation ... a misdemeanor and not an infraction."												
21	Per VC 40000.7: "Violation ... is a misdemeanor and not an infraction ... when committed by any person with intent to defraud."												
2	Per VC 40000.9: "Violation ... a misdemeanor and not an infraction."												
23	Per VC 40000.9: "Violation ... a misdemeanor and not an infraction." VC 10751 authorizes seizure, impoundment, sale, or destruction of vehicle.												
24	Per VC 10851(a): "... punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than \$5,000, or by both the fine and imprisonment."												
25	Per VC 10851.5: "any person who is a party or accessory to or an accomplice in an unauthorized taking or stealing is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than six months or by a fine of not less than \$1,000 or by both such fine and imprisonment."												
26	Per VC 40000.9: "Violation ... a misdemeanor and not an infraction."												
27	Per VC 40000.9: "Violation ... a misdemeanor and not an infraction."												
28	Per VC 10854: "fine of not exceeding \$1,000 or imprisonment in the county jail for not exceeding 1 year or by both."												
29	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
30	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
31	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
32	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
33	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
34	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
35	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
36	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
37	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
38	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
39	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
40	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
41	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
42	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
43	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
44	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
45	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
46	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
47	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA* & PA Subtotal	Fine Surcharge	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30</b>	<b>1</b>	
48	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
49	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
50	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
51	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
52	Per VC 12110(d)(1): "... fine of not more than \$5,000 ... ."												
53	Per VC 12110(d)(1): "... fine of not more than \$5,000 ... ."												
54	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
55	Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."												
56	Per VC 13004.1(b): "(1) ... fine of not less than \$250 and not more than \$1,000 and 24 hours of community service to be served when the person is not employed or is not attending school. No part of the fine or community service shall be suspended or waived. (2) In lieu of the penalties imposed under paragraph (1), the court, in its discretion, may impose a jail term of up to one year and a fine of up to \$1,000. In exercising its discretion the court shall consider the extent of the defendant's commercial motivation for the offense."												
57	Per VC 14601(f), VC 14601 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Fine of \$300 to \$1,000 set per VC 14601(b)(1). VC 14601(e) requires that, except in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to VC 23575, require a person convicted of violating VC 14601(a), when the prosecution agrees to a plea of guilty or nolo contendere to a charge of violating VC 14601 in satisfaction of, or as a substitute for, an original charge of a violation of VC 14601.2, to install, for a period not to exceed three years, a certified ignition interlock device on any vehicle the person owns or operates.												
58	Per VC 14601.1(e), VC 14601.1 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Fine of \$300 to \$1,000 set per VC 14601.1(b)(1). VC 14601.1(d) requires that, except in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to VC 23575, require a person convicted of violating VC 14601.1(a), when the prosecution agrees to a plea of guilty or nolo contendere to a charge of violating VC 14601.1 in satisfaction of, or as a substitute for, an original charge of a violation of VC 14601.2, to install, for a period not to exceed three years, a certified ignition interlock device on any vehicle the person owns or operates.												
59	Per VC 14601.2(j), VC 14601.2 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Fine of \$300 to \$1,000 set per VC 14601.2(d)(1). VC 14601.2(h) requires that, pursuant to VC 23575, the court shall require a person convicted of a violation of VC 14601.2 to install a certified ignition interlock device on a vehicle the person owns or operates.												
60	Per VC 14601.3(f), VC 14601.3 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Per VC 14601.3(e): "Any person convicted under this section of being an habitual traffic offender shall be punished as follows: (1) Upon first conviction, by imprisonment in the county jail for 30 days and by a fine of \$1,000. (2) Upon second conviction or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of \$2,000. (3) Any habitual traffic offender . . .who is convicted of a violation of Section 14601.2 shall be punished by imprisonment in the county jail for 180 days and by a fine of \$2,000. The penalty in this paragraph shall be consecutive to that imposed for the violation of any other law."												

# TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

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Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30</b>	<b>1</b>	

- 61 Per VC 14601.4(d), VC 14601.4 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Per 14601.4(b): "A person convicted under this section shall be imprisoned in the county jail and shall not be released upon work release, community service, or any other release program before the minimum period of imprisonment prescribed in Section 14601.2 is served." VC 14601.4(c) requires that, except in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to VC 23575, require a person who is convicted of violating VC 14601.4 after the prosecution agrees to a plea of guilty or nolo contendere to a charge of violating VC 14601.4 in satisfaction of, or as a substitute for, an original charge of a violation of VC 14601.2 to install, for a period not to exceed three years, a certified ignition interlock device on a vehicle the person owns or operates.
- 62 Per VC 14601.5(h), VC 14601.5 applies to the operation of an off-highway motor vehicle on those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with VC 38000)) applies as to off-highway motor vehicles, as described in VC 38001. Fine of \$300 to \$1,000 set per VC 14601.5(d)(1). VC 14601.5(g) requires that, except in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to VC 23575, require a person who is convicted of violating VC 14601.5(a) or VC 14601.5(b) after the prosecution agrees to a plea of guilty or nolo contendere to a charge of violating VC 14601.5(a) or VC 14601.5(b) in satisfaction of, or as a substitute for, an original charge of a violation of VC 14601.2 to install, for a period not to exceed three years, a certified ignition interlock device on a vehicle the person owns or operates.
- 63 Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."
- 65 Per VC 14610.1(b): "(1) ... fine of not less than \$250 and not more than \$1,000 and 24 hours of community service to be served when the person is not employed or is not attending school. No part of the fine or community service shall be suspended or waived. (2) In lieu of the penalties imposed under paragraph (1), the court, in its discretion, may impose a jail term of up to one year and a fine of up to \$1,000. In exercising its discretion the court shall consider the extent of the defendant's commercial motivation for the offense."
- 66 Per VC 15309.5(b): "A first conviction under this section is punishable as either an infraction or a misdemeanor ... . A second or subsequent conviction is punishable as a misdemeanor ... ."
- 67 Per VC 15309.5(b): "A first conviction under this section is punishable as either an infraction or a misdemeanor ... . A second or subsequent conviction is punishable as a misdemeanor ... ."
- 68 Per VC 15309.5(b): "A first conviction under this section is punishable as either an infraction or a misdemeanor ... . A second or subsequent conviction is punishable as a misdemeanor ... ."
- 69 Per VC 40000.11: "Violation ... a misdemeanor and not an infraction."
- 70 Per VC 16030: "... punishable by a fine not exceeding \$750 or imprisonment in the county jail not exceeding 30 days, or by both ... ." Court shall suspend or restrict the driver's license
- 72 Per VC 20001(b)(1): "... punished by imprisonment in the state prison, or in a county jail for not more than one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both that imprisonment and fine."
- 73 Per VC 40000.13: "Violation ... a misdemeanor and not an infraction."
- 74 Per VC 21464: "(d) Any willful violation of subdivision (a), (b), or (c) that results in injury to, or the death of a person is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for a period of not more than six months, and by a fine of not less than \$5,000 nor more than \$10,000. ... (f) The court shall allow the offender to perform community service designated by the court in lieu of all or part of any fine imposed under this section."
- 75 Per VC 40000.13: "Violation ... a misdemeanor and not an infraction."
- 76 Per VC 40000.13: "Violation ... a misdemeanor and not an infraction." Per VC 21651(c): "Punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or
- 77 Per VC 21655.9(e): "This section shall become inoperative on January 1, 2019, or the date the federal authorization pursuant to Section 166 of Title 23 of the United States Code expires,



## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		10/10		7.00	5/10	5.00	20%	2.00	4		40 30	1	
78	Per VC 21702(e).												
79	A "serious traffic violation" as defined in VC 15210 and subject to sanctions under VC 15306 or VC 15308. Per VC 15306: "No driver may operate a commercial motor vehicle for a												
82	Per VC 22513(e): "... punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
83	Per VC 22513(e): "... punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
84	Per VC 22513(e): "... punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
85	Per VC 22513(e): "... punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
86	Assem. Bill 2167 (Stats. 2016, ch. 518).												
87	Assem. Bill 2167 (Stats. 2016, ch. 518). "Per VC 22513.1 (e) A person who willfully violates this section is guilty of a misdemeanor, and is punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
88	Assem. Bill 2167 (Stats. 2016, ch. 518). "Per VC 22513.1(c) (e): "... punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
89	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."												
90	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Sen. Bill 752 (Stats. 2013, ch. 605). Per VC 22658(j)(2): "punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
91	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Sen. Bill 752 (Stats. 2013, ch. 605). Per VC 22658(k)(3): "punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
92	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Sen. Bill 752 (Stats. 2013, ch. 605). Per VC 22658(l)(4): "punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
93	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Sen. Bill 752 (Stats. 2013, ch. 605). Per VC 22658(l)(4): "punishable by a fine of not more than \$2,500, or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment."												
94	Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."												
95	Per VC 23103(c): "Except as provided in section 40008, ... punished by imprisonment in a county jail for not less than five days nor more than 90 days or by a fine of not less than \$145 nor more than \$1,000, or by both that fine and imprisonment, except as provided in Section 23104 or 23105."												
96	Per VC 23104(a): "imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than \$220 nor more than \$1,000, or by both the fine and imprisonment" for reckless driving causing bodily injury.												
97	Per VC 23104(b): "Any person convicted of reckless driving which proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, who previously has been convicted of a violation of Section 23103, 23104, 23109, 23152, or 23153, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than \$220 nor more than \$1,000 or by both the fine and imprisonment."												
98	Per VC 23105(a): Reckless driving causing loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of a bodily member or organ, a wound requiring extensive suturing, a serious disfigurement, brain injury, or paralysis is "punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than \$220 nor more than \$1,000, or by both that fine and imprisonment."												

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA* & PA Subtotal	Fine Surcharge	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>
99	Per VC 23109(e)(1): "A person convicted of a violation of subdivision (a) shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than \$355 nor more than \$1,000, or by both that fine and imprisonment. The person shall also be required to perform 40 hours of community service."												
100	Per VC 23109(i): "punished by imprisonment in a county jail for not more than 90 days or by a fine of not more than \$500 or by both that fine and imprisonment."												
101	Per VC 23109(i): "punished by imprisonment in a county jail for not more than 90 days or by a fine of not more than \$500 or by both that fine and imprisonment."												
102	Per VC 23109(i): "punished by imprisonment in a county jail for not more than 90 days or by a fine of not more than \$500 or by both that fine and imprisonment."												
103	Per VC 23109(e)(2): "punishable by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than \$500 nor more than \$1000, or by both the fine and imprisonment."												
104	Per VC 23109.1(a): a speed contest causing loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of a bodily member or organ, a wound requiring extensive suturing, a serious disfigurement, brain injury, or paralysis is "punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than \$500 nor more than \$1,000, or by both that fine and imprisonment."												
105	Assem. Bill 2687 (Stats. 2016, ch. 765). Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a). \$390 minimum base fine per VC 23536 and VC 23538. The "Total Bail" must be distributed in accordance with statutory distribution pursuant to PC 1463.001,1463.14,1463.16, 1463.18, 1464, and 1465.7; GC 70372, 70375, 76000, 76000.5, 76104.6, and 76104.7; and the accounting guidelines contained in Chapter 5, "Revenue Distribution," of the California State Controller's Manual of Accounting and Auditing Guidelines for Trial Courts.												
106	Assem. Bill 2687 (Stats. 2016, ch. 765). Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a). \$390 minimum base fine per VC 23536 and VC 23538. The "Total Bail" must be distributed in accordance with statutory distribution pursuant to PC 1463.001,1463.14,1463.16, 1463.18, 1464, and 1465.7; GC 70372, 70375, 76000, 76000.5, 76104.6, and 76104.7; and the accounting guidelines contained in Chapter 5, "Revenue Distribution," of the California State Controller's Manual of Accounting and Auditing Guidelines for Trial Courts.												
107	Assem. Bill 2687 (Stats. 2016, ch. 765). Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a). \$390 minimum base fine per VC 23536 and VC 23538. The "Total Bail" must be distributed in accordance with statutory distribution pursuant to PC 1463.001,1463.14,1463.16, 1463.18, 1464, and 1465.7; GC 70372, 70375, 76000, 76000.5, 76104.6, and 76104.7; and the accounting guidelines contained in Chapter 5, "Revenue Distribution," of the California State Controller's Manual of Accounting and Auditing Guidelines for Trial Courts.												
108	Assem. Bill 2687 (Stats. 2016, ch. 765).												
109	Assem. Bill 2687 (Stats. 2016, ch. 765).												
110	Base fine for first offense per VC 23554 and VC 23556. Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a).												
111	Base fine for first offense per VC 23554 and VC 23556. Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a).												

**TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA* & PA Subtotal	Fine Surcharge	Court OPS	Conv.Assess. Night Court	"Total Bail" **
			<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40 30</b>	<b>1</b>	

112 Assem. Bill 2687 (Stats. 2016, ch. 765). Base fine for first offense per VC 23554 and VC 23556. Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a).

113 Assem. Bill 2687 (Stats. 2016, ch. 765). Base fine for first offense per VC 23554 and VC 23556. Per PC 1463.14(b), the county board of supervisors may authorize an additional penalty in the amount equal to the cost of testing, less \$50 deposited with the county treasurer per PC 1463.14(a).

114 Per VC 23224(e): "Any person convicted for a violation of subdivision (a) or (b) ... shall be punished upon conviction by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment."

115 Per VC 23247(f): Punishment shall be imprisonment for not more than six months or by a fine of not more than \$5,000 or both.

116 Per VC 23573(i): "... punished by imprisonment in the county jail for not more than six months or by a fine of not more than \$5,000 or by both that fine and imprisonment."

117 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Per VC 24002.5(b): "... a fine of not less than \$1,000 and not more than \$5,000 ... . No part of any fine imposed ... may be suspended."

118 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction." Per VC 24011.3(c)(1): "fine of not more than \$500."

119 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

120 Vehicle Code section 27150.1 authorizes citation as a misdemeanor. Penal Code sections 17 and 19.8 allow charging VC 27150.1 as an infraction with a fine of up to \$250.

121 Assem. Bill 2387 (Stats. 2016, ch. 694) VC 27317 limits fine amount to \$5,000. Per VC 27317 (c), a violation of subdivision (a) or (b) is a misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.

122 Assem. Bill 2387 (Stats. 2016, ch. 694) VC 27317 limits fine amount to \$5,000. Per VC 27317 (c), a violation of subdivision (a) or (b) is a misdemeanor punishable by a fine of up to five thousand dollars (\$5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.

123 Per VC 27362(a)(1): "... fine not exceeding \$400 ... ."

124 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

125 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

126 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

127 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

128 Per VC 40000.15: "Violation ... a misdemeanor and not an infraction."

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
		10/10		7.00	5/10	5.00	20%	2.00	4		40	30	1
129	Per VC 31404: "Any person who operates, or any owner or farm labor contractor who knowingly allows the operation of, a farm labor vehicle in violation of subdivision (b) or (d) of Section 31401 or Section 31402 or 31403 is guilty of a misdemeanor. When a person has been convicted of willfully violating those provisions, the person shall, in addition, be fined not less than \$1,000 for each violation, and no part of the fine may be suspended. If passengers are in the vehicle at the time of the violation, the person shall, in addition, be fined \$500 for each passenger, not to exceed a total of \$5,000 for each violation, and no part of this fine may be suspended. As used in this section, the terms 'knowingly' and 'willfully' have the same meaning as prescribed in Section 7 of the Penal Code."												
130	Per VC 31402(b): " ... fine of not less than \$1,000 and not more than \$5,000 ... . No part of any fine imposed ... may be suspended."												
131	Per VC 32002(b): "... a violation of this subdivision shall be punished ... by a fine of not less than \$2,000 ... ."												
132	Per VC 40000.19: "Violation ... a misdemeanor and not an infraction."												
133	Per VC 40000.21: Violation "... a misdemeanor and not an infraction." Per VC 34501.3(c) : "For a violation of paragraph (2) of subdivision (a), a first offense is punishable by a fine of not more than \$1,000; a second offense by a fine of not more than \$2,500, and a third or subsequent offense by a fine of not more than \$5,000."												
134	Per VC 40000.22(a): A violation of "subdivision (b) or (d) of Section 34501.12 ... relating to applications for inspections is a misdemeanor and not an infraction. ... (c)This section shall become operative on January 1, 2016 ... ."												
135	Per VC 40000.22(a): A violation of "subdivision (b) or (d) of Section 34501.12 ... relating to applications for inspections is a misdemeanor and not an infraction. ... (c)This section shall												
136	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
137	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
138	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
139	Per VC 42001.3(b).												
140	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
141	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
142	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
143	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
144	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
145	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
146	Per VC 40000.22(b): Violation "... a misdemeanor and not an infraction."												
147	Per VC 40000.22(b): Violation "... a misdemeanor and not an infraction."												
148	Per VC 40000.21: Violation "... a misdemeanor and not an infraction."												
149	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
150	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
151	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
152	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												

## TRAFFIC MISDEMEANOR BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Vehicle Code)

Notes

Section	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess. Night Court	"Total Bail" **
		<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>30</b>	<b>1</b>
153	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
154	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
15	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
156	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
157	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
158	Per VC 40000.23: "Violation ... a misdemeanor and not an infraction ... except in case of weight violations where the amount of excess weight is less than 4,501 pounds."												
159	Per VC 35784, the penalty for violation is as follows:												
161	Per VC 35784.5(a): "Any person convicted of transporting an extralegal load on a highway, or causing or directing the operation of or driving on a highway any vehicle or combination												
162	Fine specified by VC 42030. Per VC 40000.23: "Violation ... a misdemeanor and not an infraction."												
163	Fine specified by VC 42030. Per VC 40000.23: "Violation ... a misdemeanor and not an infraction."												
164	Per VC 38316(b): "... fine of not less than \$50 ... ."												
165	Per VC 38316(b): "... fine of not less than \$50 ... ."												
166	Fine of: "... not less than \$100 nor more than \$1,000 ... ."												
167	Fine of: "... not more than \$1,000 ... ."												
168	Fine of: "... not more than \$1,000 ... ."												
169	Per VC 4000.24, violation is: "... a misdemeanor and not an infraction ... ."												
170	Per VC 4000.24, violation is: "... a misdemeanor and not an infraction ... ."												
171	Fine of "... not more than \$10,000."												
172	Per VC 40000.25: "Violation ... a misdemeanor and not an infraction."												
173	Per VC 40008(a): " ... shall be punished by imprisonment in a county jail for not more than six months and by a fine of not more than \$2,500."												
174	Per VC 40008(a): " ... shall be punished by imprisonment in a county jail for not more than six months and by a fine of not more than \$2,500."												
175	Per VC 40008(b): " ... shall be punished by imprisonment in a county jail for not more than one year and by a fine of not more than \$5,000."												
176	Per VC 40008(b): " ... shall be punished by imprisonment in a county jail for not more than one year and by a fine of not more than \$5,000."												
177	Per VC 40000.25: "Violation ... a misdemeanor and not an infraction."												

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42009  
VIOLATIONS COMMITTED IN HIGHWAY CONSTRUCTION OR MAINTENANCE AREA**

(\*See Preface, Sections III and IV.C.2) (\*\*See Preface, Section IV)

(Vehicle Code)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21367	(b,c)	I	Failure to Obey Traffic Control/Devices at Construction Site	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21451	(a,b)	I	"Green" Signal-Vehicular Responsibilities	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21453	(a,c)	I	"Red" Signal-Vehicular Responsibilities	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21453	(b)	I	"Red" Signal-Vehicular Responsibilities With Right Turn	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21454	(c)	I	Lane Use-Red Control Signals	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21454	(d)	I	Lane Use-Flashing Yellow Control Signals	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21455		I	Traffic Control Signal at Other Than Intersection	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21457	(a)	I	Actions Required at Flashing Red Signals	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21457	(b)	I	Actions Required at Flashing Yellow Signals	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21460	(a,b)	I	Improper Turn Over Double Lines Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21460.5	(c)	I	Improper Turn From Two-Way Left-Turn Lane	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21461	(a)	I	Driver Failure to Obey Signs/Signals	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21462		I	Disobedience of Driver or Streetcar Motorman to Traffic Control Signals	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21464	(a)	I	Unauthorized Interference With Traffic Device Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21464	(b)	I	Unauthorized Use of Traffic Interference Device	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21464	(c)	I	Unauthorized Possession of Traffic Interference Device	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21464	(e)	I	Willful Interference With Traffic Device or Willful Use, Possession, or Distribution of Traffic Interference Device That Does Not Result in Injury	535	540	378.00	270	270	107	108	4	2,212.00	40	35	1	0.00	2,288.00	4b	0
21466.5		I	Light Impairing Driver's Vision Prohibited	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	1b	0

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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	<b>0.00</b>			
21650		I Failure to Keep to Right Side of Road	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21651	(a)	I Driving Across Dividing Section on Freeway Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21652		I Improperly Entering Highway From Service Road	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21654	(a)	I Slow-Moving Vehicles—Keep to Right Edge of Roadway	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21655	(b)	I Failure to Use Designated Lanes	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21655.5	(b)	I Improper Use of Preferential Lanes	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b 0
21655.8	(a)	I Driving Over Double Lines of Preferential Lanes	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b 1
21656		I Failure of Slow-Moving Vehicles to Turn Out	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21657		I Driving Against One-Way Traffic Patterns	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21658	(a,b)	I Lane Straddling/Failure to Use Specified Lanes	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21659		I Unsafe Driving on Three-Lane Highway	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21660		I Failure of Approaching Vehicles to Pass to the Right	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21661		I Right-of-Way Rule—Narrow Grades	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21662	(a,b)	I Mountains—Keep to Right—Use Horn	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21663		I Driving on Sidewalk Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21664		I Failure to Use Designated Freeway On-/Off-ramp Properly	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21700		I Load/Passengers Not to Obstruct Driver's View	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21703		I Following Too Closely Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1
21704	(a)	I Trucks/Trailers Following Too Closely Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b 1

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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21705	I	Caravans Following Too Closely Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21706	I	Following Emergency Vehicles Too Closely Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21706.5 (b)	I	Operation of Vehicle in Unsafe Manner in an Emergency Incident Zone	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	4b	1
21707	I	Driving Within 300 Feet of Fire Areas Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21708	I	Running Over Unprotected Fire/Chemical Hose Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21709	I	Driving Within Safety Zone Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21710	I	Coasting in Neutral on Downgrade Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21711	I	Whipping or Swerving Towed Vehicle Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21712 (a)	I	Allowing Riding on Portion of Vehicle Not Designed for Passenger Use Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21712 (b)	I	Unlawful Riding on Vehicle Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0
21712 (c)	I	Driver Permitting Riding in Trunk of Vehicle	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21712 (d)	I	Riding in Trunk of Vehicle	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	0
21712 (g)	I	Towing Trailer Coach, Camp Trailer, or Trailer Carrying Vessel That Contains Passenger	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21712 (h)	I	Driving While Towing Person Riding on Motorcycle, Motorized Bicycle, Bicycle, Coaster, Roller Skates, Sled, Skis, or Toy Vehicle	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21714 (a)	I	Use of Three-Wheeled Vehicle in HOV Lane	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1



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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21714	(b)	I Use of Three-Wheeled Vehicle in Lane Adjacent to Striping or Area Between Two or More Vehicles Traveling in Adjacent Traffic Lanes	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21715	(a,b)	I Exceeding Passenger Vehicle Towing Combination Limits	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21720		I Unlawful Operation of Pocket Bike	35	40	28.00	20	20	7	8	4	162.00	40	35	1	0.00	238.00	2b	0
21750		I Overtaking and Passing Unsafely	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21751		I Passing Without Sufficient Clearance	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21752	(a,b,d)	I Driving Left of Center Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21752	(c)	I Driving Left of Center—Within 100 Feet or When Traversing Railroad Grade Crossing—Prohibited	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21753		I Failure to Yield to Overtaking Vehicle	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21754	(a-e)	I Improper Passing on Right Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21755		I Unsafe Passing on Right Shoulder	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21758		I Unsafe Passing on Grades Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21760	(b)	<sup>1</sup> I Overtaking or Passing Bicycle Unsafely	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4b	1
21760	(b)	<sup>1</sup> I Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Unsafely	255	260	182.00	130	130	51	52	4	1,064.00	40	35	1	0.00	1,140.00	4b	1
21760	(c)	<sup>1</sup> I Overtaking or Passing Bicycle at Distance of Less Than Three Feet	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4b	1
21760	(c)	<sup>1</sup> I Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle at Distance of Less Than Three Feet	255	260	182.00	130	130	51	52	4	1,064.00	40	35	1	0.00	1,140.00	4b	1
21760	(d)	<sup>1</sup> I Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	4b	1

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					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	<b>0.00</b>				
21760	(d)	<sup>1</sup> I	Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	255	260	182.00	130	130	51	52	4	1,064.00	40	35	1	0.00	1,140.00	4b	1
21800	(a-c)	I	Violation of Right-of-Way/Uncontrolled Intersection	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21800	(d)(1,2)	I	Violation of Right-of-Way/Controlled Intersection With Inoperative Control Signals	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21801	(a,b)	I	Violation of Right-of-Way-Left Turn	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21802	(a,b)	I	Violation of Right-of-Way-Entering Through Highway	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21803	(a,b)	I	Violation of "Yield" Sign	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21804	(a,b)	I	Entering Highway From Alley or Driveway	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21806	(a,b)	I	Failure to Yield to Emergency Vehicle	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
21807		I	Driving Authorized Emergency Vehicle Without Due Regard for Safety of Persons and Property	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
21809	(a)	I	Failure to Slow Down or Change Lane When Approaching and Passing Stationary Emergency Vehicle or Tow Truck Displaying Specific Lights	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22100	(a,b)	I	Turn at Intersection From Wrong Position	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22100.5		I	U-Turn at Controlled Intersection	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22101	(d)	I	Violating Special Traffic Control Markers	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22102		I	Illegal U-Turn in Business District	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22103		I	Illegal U-Turn in Residential District	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22104		I	Illegal U-Turn Near Fire Station	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1

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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
22105	I	Illegal U-Turn on Highway Without Unobstructed View	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22106	I	Unsafe Starting or Backing on Highway	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22107	I	Unsafe Turn or Lane Change Prohibited	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22108	I	Signal Required Before Turning or Changing Lanes	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22109	I	Sudden Stopping Without Signaling	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22110	(a,b)	I Hand/Lamp Signal Not Given	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22348	(b)	I Speeding Over 100 MPH Prohibited	235	240	168.00	120	120	47	48	4	982.00	40	35	1	0.00	1,058.00	4b	2
22348	(c)	I Failure of Vehicles Subject to VC 22406 to Use Designated Lane	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1
22349	(a)	I Exceeding Maximum Speed Limit of 65 MPH															4b	1
22349	(b)	I Exceeding Maximum Speed Limit of 55 MPH on a Two-Lane Undivided Highway															4b	1
22350	I	Unsafe Speed for Prevailing Condition															4b	1
22351	(a,b)	I Driving in Excess of Prima Facie Speed Limits Established in VC 22352															4b	1
22352	(a)(1)	I Operating Vehicle in Excess of 15 MPH at Railroad Crossing															4b	1
22352	(a)(2)	I Operating Vehicle in Excess of 15 MPH at Freeway Intersection With No Clear Field of Vision															4b	1
22352	(a)(3)	I Operating Vehicle in Excess of 15 MPH on Any Alley															4b	1
22352	(b)(1)	I Operation Vehicle in Excess of 25 MPH in Business District															4b	1
22352	(b)(2)	I Operating Vehicle in Excess of 25 MPH by School															4b	1

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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	<b>0.00</b>					
22352	(b)(3)	I	Operating Vehicle in Excess of 25 MPH by Senior Center															4b	1
22354		I	Failure to Abide by Speed Limits Set by the State Department of Transportation (DOT) on State Highways															4b	1
22355		I	Failure to Abide by Variable Speed Limits Set by the State Department of Transportation (DOT)															4b	1
22357		I	Violation of Prima Facie Local Speed Limit															4b	1
22358		I	Violation of Local Speed Limit															4b	1
22358.3		I	Violation of Local Speed Limit on Narrow Street															4b	1
22358.4		I	Violation of Prima Facie Local Speed Limit															4b	1
22360		I	Violation of Local Speed Limits Between Business and Residence Districts															4b	1
22361		I	Violation of Speed Limit on Multiple Lane Highways															4b	1
22362		I	Violation of Speed Limit Surrounding Special Work Crews															4b	1
22363		I	Violation of DOT or Local Speed Limit Set for Snow or Ice															4b	1
22364		I	Violation of Speed Limit Set by DOT on State Highways															4b	1
22406	(a)	I	Truck or Tractor 1-9 MPH Over 55 MPH Limit	85	90	63.00	45	45	17	18	4	367.00	40	35	1	0.00	443.00	4b	1
22406	(a)	I	Truck or Tractor 10 MPH or More Over 55 MPH Limit	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
22407		I	Posted Speed for Designated Vehicles-In Excess of Speed Limit by 10 MPH or More	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1
22409		I	Speed Limit for Solid Tire Vehicle															4b	1

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 (Vehicle Code)**

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points	
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>				
22410	I	Exceeding Speed Limit for Metal Tire Vehicles	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1	
22413	I	Violation of Speed Limit Set by Local Authority for Steep Grades															4b	1	
																		[See Speed Chart]	
22450	(a)	I Failure to Stop at Stop Sign	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	1	
22450	(b)	I Failure to Stop at Stop Sign at Railroad Grade Crossing	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1	
22451	(a,b)	I Failure to Stop for Train Signals/Closed Gates	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1	
22452	(b)	I Failure of Certain Vehicles to Stop at Railroad Crossings	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1	
22452	(c)	I Failure of Commercial Vehicle to Stop at Railroad Crossings	135	140	98.00	70	70	27	28	4	572.00	40	35	1	0.00	648.00	4b	1	
22454	(a)	I Passing School Bus With Flashing Signals	185	190	133.00	95	95	37	38	4	777.00	40	35	1	0.00	853.00	4b	1	
22455	(a)	I Vending From Vehicle Without Coming to a Complete Stop or Parking the Vehicle Lawfully	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0	
22456	(e)(1-3)	I Vending From an Ice Cream Truck Under Prohibited Conditions	70	70	49.00	35	35	14	14	4	291.00	40	35	1	0.00	367.00	2b	0	
23109	(c)	<sup>2</sup> I Engaging In/Abetting Exhibition of Speed Prohibited	110	110	77.00	55	55	22	22	4	455.00	40	35	1	0.00	531.00	2b	2	
23154	(a)	I Driving With Blood Alcohol Level of .01 or Greater While on Probation for Violation of VC 23152 or VC 23153	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0	
23220	(a)	I Drinking Alcoholic Beverage While Driving Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	1	
23221	(a)	I Drinking Alcoholic Beverage by Driver Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0	
23221	(b)	I Drinking Alcoholic Beverage by Passenger Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0	
23222	(a)	I Possession of Open Container While Driving Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	1	

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42009  
VIOLATIONS COMMITTED IN HIGHWAY CONSTRUCTION OR MAINTENANCE AREA**

(\*See Preface, Sections III and IV.C.2) (\*\*See Preface, Section IV)

(Vehicle Code)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>	<b>40</b>	<b>1</b>	<b>0.00</b>					
23222	(b)	I	Possession of Marijuana by Driver	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	1
23223	(a)	<sup>3</sup>	I Possession of Open Container by Driver Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0
23223	(b)	<sup>3</sup>	I Possession of Open Container by Passenger Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0
23225	(a)(1)	<sup>3</sup>	I Storage of Open Container Restricted	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0
23226	(a)	I	Storage by Driver of Open Container in Passenger Compartment Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0
23226	(b)	I	Storage by Passenger of Open Container in Passenger Compartment Prohibited	105	110	77.00	55	55	21	22	4	449.00	40	35	1	0.00	525.00	3b	0
22406.1		M	Maximum Speed for Commercial Vehicles— In Excess of Speed Limit by 15 MPH or More	600	600	420.00	300	300	120	120	4	2,464.00	40	30	1		2,535.00		1.5
23103	(a,b)	M	Reckless Driving	290	290	203.00	145	145	58	58	4	1,193.00	40	30	1		1,264.00		2
23104	(a)	M	Reckless Driving—Bodily Injury	700	700	490.00	350	350	140	140	4	2,874.00	40	30	1		2,945.00		2
23104	(b)	M	Reckless Driving—Great Bodily Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1		4,175.00		2
23105	(a)	M	Reckless Driving—Specific Injury	1,500	1,500	1,050.00	750	750	300	300	4	6,154.00	40	30	1		6,225.00		2
23109	(a)	M	Engaging in Speed Contests Prohibited	720	720	504.00	360	360	144	144	4	2,956.00	40	30	1		3,027.00		2
23109	(b)	M	Abetting Speed Contest Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	30	1		895.00		1
23109	(c)	M	Engage In/Abet Exhibition of Speed Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	30	1		895.00		2
23109	(d)	M	Placing Barricades or Obstructions Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	30	1		895.00		1
23109	(e)(2)	<sup>4</sup>	M Engaging in Speed Contest and Causing Bodily Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1		4,175.00		2
23109.1		M	Engaging in Speed Contest—Specific Injury	1,500	1,500	1,050.00	750	750	300	300	4	6,154.00	40	30	1		6,225.00		2
23152	(a,b)	M	Driving Under Influence of Alcohol	780	780	546.00	390	390	156	156	4	3,202.00	40	30	1		3,273.00		2
23152	(c)	M	Driving While Addicted to Drug	780	780	546.00	390	390	156	156	4	3,202.00	40	30	1		3,273.00		2
23152	(d)	M	Driving Commercial Vehicle Under Influence of Alcohol	900	900	630.00	450	450	180	180	4	3,694.00	40	30	1		3,765.00		3

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42009  
 VIOLATIONS COMMITTED IN HIGHWAY CONSTRUCTION OR MAINTENANCE AREA  
 (\*See Preface, Sections III and IV.C.2) (\*\*See Preface, Section IV)  
 (Vehicle Code)**

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>	<b>40</b>	<b>30</b>	<b>1</b>	<b>0.00</b>			
23152	(e)	M	Driving Under Influence of Drug	780	780	546.00	390	390	156	156	4	3,202.00	40	30	1	3,273.00	2	
23152	(f)	M	Driving Under Influence of Alcohol and Drug	780	780	546.00	390	390	156	156	4	3,202.00	40	30	1	3,273.00	2	
23153	(a,b)	M	Driving Under Influence of Alcohol While Causing Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00	2	
23153	(d)	M	Driving Commercial Vehicle Under Influence of Alcohol While Causing Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00	3	
23153	(e)	M	Driving Under Influence of Drug While Causing Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00	2	
23153	(f)	M	Driving Under Influence of Alcohol and Drug While Causing Injury	1,000	1,000	700.00	500	500	200	200	4	4,104.00	40	30	1	4,175.00	2	
23224	(a,b)	M	Possession of Alcohol by Minor Prohibited	200	200	140.00	100	100	40	40	4	824.00	40	30	1	895.00	0	

**Notes**

<sup>1</sup> Per VC 21760(f): "operative on September 16, 2014."

<sup>2</sup> Per PC 19.8: VC 23109(c) charged as an infraction is subject to fine "... not to exceed \$250 ... ."

<sup>3</sup> Per VC 40000.20: a third or subsequent violation relating to "a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the public Utilities Code), is a

<sup>4</sup> Per VC 23109(e)(2): "punishable by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than \$500 nor more than \$1000, or by both the fine and imprisonment."

**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Sections III and IV.C.2) (\*\*See Preface, Section IV)  
 (Vehicle Code)

**ENHANCED PENALTY SPEED CHART AMOUNTS PER VEHICLE CODE SECTION 42009**  
**VIOLATIONS COMMITTED IN HIGHWAY CONSTRUCTION OR MAINTENANCE AREA**  
**(FOR ALL SPEED LIMITS)**

<b>MPH Over Limit</b>	<b>bail</b>	<b>State PA*</b>	<b>County PA*/10</b>	<b>DNA PA*</b>	<b>Court Facility Const. PA*/10</b>	<b>Surcharge*</b>	<b>EMS PA*/10</b>	<b>EMAT PA*</b>	<b>Fine Surcharge &amp; PA Subtotal</b>	<b>Court OPS</b>	<b>Conv.Assess.</b>	<b>Night Court</b>	<b>TAP Fee</b>	<b>"Total Bail" **</b>
		10/10	7.00	5/10	5.00	20%	2.00	4		40	35	1	0.00	
1–15	\$70	\$70	\$49.00	\$35	\$35	\$14	\$14	\$4	\$291.00	\$40	\$35	\$1	\$0.00	\$367.00
16–25	\$105	\$110	\$77.00	\$55	\$55	\$21	\$22	\$4	\$449.00	\$40	\$35	\$1	\$0.00	\$525.00
26 and over <sup>1</sup>	\$135	\$140	\$98.00	\$70	\$70	\$27	\$28	\$4	\$572.00	\$40	\$35	\$1	\$0.00	\$648.00

<sup>1</sup> Per VC 42000.5: "Every person convicted of an infraction for a violation of Section 22350, 22406, or 22407 while operating a bus, motor truck, or truck tractor having three or more axles, or any motor truck or truck tractor drawing any other vehicle, shall be punished by a fine not exceeding \$100 for a first conviction, except that if a person has exceeded the specified speed limit by 10 miles per hour or more, the fine shall not exceed \$200 for a first conviction and not exceeding \$300 for a second or subsequent conviction."



**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County PA*	DNA PA*	Court PA*	Surcharge*	EMS PA*	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>	<b>40</b>	<b>1</b>	<b>0.00</b>				
21650	I	Failure to Keep to Right Side of Road	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21651 (a)	I	Driving Across Dividing Section on Freeway Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21652	I	Improperly Entering Highway From Service Road	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21654 (a)	I	Slow-Moving Vehicles Keep to Right Edge of Roadway	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21655 (b)	I	Failure to Use Designated Lanes	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21655.5 (b)	I	Improper Use of Preferential Lanes	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b 0
21655.8 (a)	I	Driving Over Double Lines of Preferential Lanes	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b 1
21656	I	Failure of Slow-Moving Vehicles to Turn Out	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21657	I	Driving Against One-Way Traffic Patterns	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21658 (a,b)	I	Lane Straddling/Failure to Use Specified Lanes	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21659	I	Unsafe Driving on Three-Lane Highway	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21660	I	Failure of Approaching Vehicles to Pass to the Right	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21661	I	Right-of-Way Rule-Narrow Grades	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21662 (a,b)	I	Mountains-Keep to Right-Use Horn	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21663	I	Driving on Sidewalk Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21664	I	Failure to Use Designated Freeway On-/Off-ramp Properly	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21700	I	Load/Passengers Not to Obstruct Driver's View	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21703	I	Following Too Closely Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1
21704 (a)	I	Trucks/Trailers Following Too Closely Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b 1

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County		Court		Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				State PA*	PA* /10	DNA PA*	PA* /10											
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21705	I	Caravans Following Too Closely Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21706	I	Following Emergency Vehicles Too Closely Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21706.5 (b)	I	Operation of Vehicle in Unsafe Manner in an Emergency Incident Zone	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	2b	1
21707	I	Driving Within 300 Feet of Fire Areas Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21708	I	Running Over Unprotected Fire/Chemical Hose Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	0
21709	I	Driving Within Safety Zone Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21710	I	Coasting in Neutral on Downgrade Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	0
21711	I	Whipping or Swerving Towed Vehicle Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21712 (a)	I	Allowing Riding on Portion of Vehicle Not Designed for Passenger Use Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21712 (c)	I	Driver Permitting Riding in Trunk of Vehicle	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b	1
21712 (d)	I	Riding in Trunk of Vehicle	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b	0
21712 (g)	I	Towing Trailer Coach, Camp Trailer, or Trailer Carrying Vessel That Contains Passenger	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21712 (h)	I	Driving While Towing Person Riding on Mortorcycle, Motorized Bicycle, Bicycle, Coaster, Roller Skates, Sled, Skis, or Toy Vehicle	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21714 (a)	I	Use of Three-Wheeled Vehicle in HOV Lane	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County State PA*	PA* /10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21714 (b)	I	Use of Three-Wheeled Vehicle in Lane Adjacent to Striping or Area Between Two or More Vehicles Traveling in Adjacent Traffic Lanes	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21715 (a,b)	I	Exceeding Passenger Vehicle Towing Combination Limits	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21716	I	Golf Cart Operation Restricted	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	0
21717	I	Turning Across Bicycle Lane	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21720	I	Unlawful Operation of Pocket Bike	35	30	21.00	0	15	7	0	4	112.00	40	35	1	0.00	188.00	1b	0
21750	I	Overtaking and Passing Unsafely	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21751	I	Passing Without Sufficient Clearance	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21752 (a,b,d)	I	Driving Left of Center Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21752 (c)	I	Driving Left of Center-Within 100 Feet or When Traversing Railroad Grade Crossing-Prohibited	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4a	1
21753	I	Failure to Yield to Overtaking Vehicle	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21754	I	Improper Passing on Right Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21755	I	Unsafe Passing on Right Shoulder	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21758	I	Unsafe Passing on Grades Prohibited	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
21760 (b)	<sup>1</sup>	I Overtaking or Passing Bicycle Unsafely	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	4b	1
21760 (b)	<sup>1</sup>	I Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Unsafely	255	220	154.00	110	110	51	44	4	948.00	40	35	1	0.00	1,024.00	4b	1
21760 (c)	<sup>1</sup>	I Overtaking or Passing Bicycle at Distance of Less Than Three Feet	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	4b	1
21760 (c)	<sup>1</sup>	I Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle at Distance of Less Than Three Feet	255	220	154.00	110	110	51	44	4	948.00	40	35	1	0.00	1,024.00	4b	1
21760 (d)	<sup>1</sup>	I Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	4b	1

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County State PA*	County PA* /10	Court DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
21760 (d)	<sup>1</sup> I	Causing Bodily Injury to a Bicycle Operator From Collision While Overtaking or Passing Bicycle Without Slowing to Reasonable Speed	255	220	154.00	110	110	51	44	4	948.00	40	35	1	0.00	1,024.00	4b	1
22348 (b)	I	Speeding Over 100 MPH Prohibited	235	200	140.00	100	100	47	40	4	866.00	40	35	1	0.00	942.00	4b	2
22348 (c)	I	Failure of Vehicles Subject to VC 22406 to Use Designated Lane	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
22349 (a)	I	Exceeding Maximum Speed Limit of 65 MPH															4b	1
22349 (b)	I	Exceeding Maximum Speed Limit of 55 MPH on a Two-Lane Undivided Highway															4b	1
22350	I	Unsafe Speed for Prevailing Conditions															4b	1
22351 (a,b)	I	Driving in Excess of Prima Facie Speed Limits Established in VC 22352															4b	1
22352 (a)(1)	I	Operating Vehicle in Excess of 15 MPH at Railroad Crossing															4b	1
22352 (a)(2)	I	Operating Vehicle in Excess of 15 MPH at Freeway Intersection With No Clear Field of Vision															4b	1
22352 (a)(3)	I	Operating Vehicle in Excess of 15 MPH on Any Alley															4b	1
22352 (b)(1)	I	Operation Vehicle in Excess of 25 MPH in Business District															4b	1
22352 (b)(2)	I	Operating Vehicle in Excess of 25 MPH by School															4b	1
22352 (b)(3)	I	Operating Vehicle in Excess of 25 MPH by Senior Center															4b	1
22354	I	Failure to Abide by Speed Limits Set by the State Department of Transportation (DOT) on State Highways															4b	1

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	State PA*	County PA* /10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
22355	I	Failure to Abide by Variable Speed Limits Set by the State Department of Transportation (DOT)						[See Speed Chart]									4b	1
22356 (b)	I	Exceeding Maximum Speed Limit of 70 MPH Where Posted						[See Speed Chart]									4b	1
22357	I	Violation of Prima Facie Local Speed Limit						[See Speed Chart]									4b	1
22358	I	Violation of Local Speed Limit						[See Speed Chart]									4b	1
22358.3	I	Violation of Local Speed Limit on Narrow Street						[See Speed Chart]									4b	1
22358.4	I	Violation of Prima Facie Local Speed Limit						[See Speed Chart]									4b	1
22360	I	Violation of Local Speed Limits Between Business and Residence Districts						[See Speed Chart]									4b	1
22361	I	Violation of Speed Limit on Multiple Lane Highways						[See Speed Chart]									4b	1
22362	I	Violation of Speed Limit Surrounding Special Work Crews						[See Speed Chart]									4b	1
22363	I	Violation of DOT or Local Speed Limit Set for Snow or Ice						[See Speed Chart]									4b	1
22364	I	Violation of Speed Limit Set by DOT on State Highways						[See Speed Chart]									4b	1
22400 (a,b)	I	Minimum Speed Law-Impeding Traffic Flow	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1
22405 (a)	I	Exceeding Maximum Posted Speeds on Bridge or in Tube or Tunnel						[See Speed Chart]									4b	1
22406 (a)	I	Truck or Tractor 1-9 MPH Over 55 MPH Limit	85	50	35.00	25	25	17	10	4	251.00	40	35	1	0.00	327.00	4b	1
22406 (a)	I	Truck or Tractor 10 MPH or More Over 55 MPH Limit	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b	1
22406 (b-f)	I	Maximum Speed for Designated Vehicles	85	50	35.00	25	25	17	10	4	251.00	40	35	1	0.00	327.00	4b	1

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County State PA*	County PA* /10	Court DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points	
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>				
22406 (b-f)	I	Maximum Speed for Designated Vehicles-In Excess of Speed Limit by 10 MPH or More	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b	1	
22406.5	I	Driving Tank Vehicle at Excessive Speed	535	500	350.00	250	250	107	100	4	2,096.00	40	35	1	0.00	2,172.00	4b	1	
22407	I	Posted Speed for Designated Vehicles	85	50	35.00	25	25	17	10	4	251.00	40	35	1	0.00	327.00	4b	1	
22407	I	Posted Speed for Designated Vehicles-In Excess of Speed Limit by 10 MPH or More	135	100	70.00	50	50	27	20	4	456.00	40	35	1	0.00	532.00	4b	1	
22409	I	Speed Limit for Solid Tire Vehicle						[See Speed Chart]										4b	1
22410	I	Exceeding Speed Limit for Metal Tire Vehicle	70	40	28.00	20	20	14	8	4	204.00	40	35	1	0.00	280.00	2b	1	
22413	I	Violation of Speed Limit Set by Local Authority for Steep Grades						[See Speed Chart]										4b	1
23109 (c)	I	Engage in/Abet Exhibition of Speed Prohibited	110	80	56.00	40	40	22	16	4	368.00	40	35	1	0.00	444.00	2b	2	
23154 (a)	I	Driving With Blood Alcohol Level of .01 or Greater While on Probation for Violation of VC 23152 or VC 23153	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0	
23220 (a)	I	Drinking Alcoholic Beverage While Driving Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	1	
23221 (a)	I	Drinking Alcoholic Beverage by Driver Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0	
23221 (b)	I	Drinking Alcoholic Beverage by Passenger Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0	
23222 (a)	I	Possession of Open Container While Driving Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	1	
23222 (b)	I	Possession of Marijuana by Driver	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	1	
23223 (a)	<sup>2</sup> I	Possession of Open Container by Driver Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0	
23223 (b)	I	Possession of Open Container by Passenger Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0	

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County		Court		Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				State PA* /10	PA* /10	DNA PA* /10	PA* /10											
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
23225 (a)(1) <sup>2</sup>	I	Storage of Open Container While Driving Restricted	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0
23226 (a)	I	Storage by Driver of Open Container in Passenger Compartment Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0
23226 (b)	I	Storage by Passenger of Open Container in Passenger Compartment Prohibited	105	70	49.00	35	35	21	14	4	333.00	40	35	1	0.00	409.00	3b	0
22406.1	M	Maximum Speed for Commercial Vehicles-In Excess of Speed Limit by 15 MPH or More	600	300	210.00	150	150	120	60	4	1,594.00	40	30	1		1,665.00		2
23103 (a,b)	M	Reckless Driving	290	150	105.00	75	75	58	30	4	787.00	40	30	1		858.00		2
23104 (a)	M	Reckless Driving-Bodily Injury	700	350	245.00	175	175	140	70	4	1,859.00	40	30	1		1,930.00		2
23104 (b)	M	Reckless Driving-Great Bodily Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00		2
23105 (a)	M	Reckless Driving-Specific Injury	1,500	750	525.00	375	375	300	150	4	3,979.00	40	30	1		4,050.00		2
23109 (a)	M	Engaging in Speed Contests Prohibited	720	360	252.00	180	180	144	72	4	1,912.00	40	30	1		1,983.00		2
23109 (b)	M	Abetting Speed Contest Prohibited	200	100	70.00	50	50	40	20	4	534.00	40	30	1		605.00		1
23109 (c)	M	Engage In/Abet Exhibition of Speed Prohibited	200	100	70.00	50	50	40	20	4	534.00	40	30	1		605.00		2
23109 (d)	M	Placing Barricades or Obstructions Prohibited	200	100	70.00	50	50	40	20	4	534.00	40	30	1		605.00		1
23109 (e)	M	Engaging in Speed Contest and Causing Bodily Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00		1
23109.1	M	Engaging in Speed Contest-Specific Injury	1,500	750	525.00	375	375	300	150	4	3,979.00	40	30	1		4,050.00		2
23152 (a,b)	M	Driving Under Influence of Alcohol	780	390	273.00	195	195	156	78	4	2,071.00	40	30	1		2,142.00		2
23152 (c)	M	Driving While Addicted to Drug	780	390	273.00	195	195	156	78	4	2,071.00	40	30	1		2,142.00		2
23152 (d)	M	Driving Commercial Vehicle Under Influence of Alcohol	900	450	315.00	225	225	180	90	4	2,389.00	40	30	1		2,460.00		3
23152 (e)	M	Driving Under Influence of Drug	780	390	273.00	195	195	156	78	4	2,071.00	40	30	1		2,142.00		2
23152 (f)	M	Driving Under Influence of Alcohol and Drug	780	390	273.00	195	195	156	78	4	2,071.00	40	30	1		2,142.00		2

**APPENDIX OF ENHANCED PENALTY AMOUNTS PER VEHICLE CODE SECTION 42010  
VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT-DOUBLE FINE ZONES**

(\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)

Vehicle Code Section	Notes Level	Offense	Base Fine	County State PA*	County PA* /10	Court DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	Night Court	TAP Fee	"Total Bail" **	Category	DMV Points
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>		<b>1</b>	<b>0.00</b>			
23153 (a,b)	M	Driving Under Influence of Alcohol While Causing Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00	2	
23153 (d)	M	Driving Commercial Vehicle Under Influence of Alcohol While Causing Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00	3	
23153 (e)	M	Driving Under Influence of Drug While Causing Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00	2	
23153 (f)	M	Driving Under Influence of Alcohol and Drug While Causing Injury	1,000	500	350.00	250	250	200	100	4	2,654.00	40	30	1		2,725.00	2	
23224 (a,b)	M	Possession of Alcohol by Minor Prohibited	200	100	70.00	50	50	40	20	4	534.00	40	30	1		605.00	0	

<sup>1</sup> Per VC 21760(f): "operative on September 16, 2014."

<sup>2</sup> Per VC 40000.20: a third or subsequent violation relating to "a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers' Act (Chapter 8 (commencing with Section 5351) of Division 2 of the public Utilities Code), is a misdemeanor.



**TRAFFIC INFRACTION FIXED PENALTY SCHEDULE**  
 (\*See Preface, Sections III and IV.C.3) (\*\*See Preface, Section IV)  
 (Vehicle Code Sections)

**ENHANCED PENALTY SPEED CHART AMOUNTS PER VEHICLE CODE SECTION 42010<sup>1</sup>**  
**VIOLATIONS COMMITTED IN SAFETY ENHANCEMENT–DOUBLE FINE ZONES**  
**(FOR ALL SPEED LIMITS)**

<b>MPH Over Limit</b>	<b>bail</b>	<b>State PA*</b>	<b>County PA*/10</b>	<b>DNA PA*</b>	<b>Court Facility Const. PA*/10</b>	<b>Surcharge*</b>	<b>EMS PA*/10</b>	<b>EMAT PA*</b>	<b>Fine Surcharge &amp; PA Subtotal</b>	<b>Court OPS</b>	<b>Conv.Assess.</b>	<b>Night Court</b>	<b>TAP Fee</b>	<b>"Total Bail" **</b>
		<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>35</b>	<b>1</b>	<b>0.00</b>	
1–15	\$70	\$40	\$28.00	\$20	\$20	\$14	\$8	\$4	\$204.00	\$40	\$35	\$1	\$0.00	\$280.00
16–25	\$105	\$70	\$49.00	\$35	\$35	\$21	\$14	\$4	\$333.00	\$40	\$35	\$1	\$0.00	\$409.00
26 and over <sup>2</sup>	\$135	\$100	\$70.00	\$50	\$50	\$27	\$20	\$4	\$456.00	\$40	\$35	\$1	\$0.00	\$532.00

<sup>1</sup> Per VC 42010(d)(2), any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed per VC 42010.

<sup>2</sup> Per VC 42000.5: "... if a person has exceeded the specified speed limit by 10 miles per hour or more, the fine shall not exceed \$200 for a first conviction ... ."

**BOATING BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*Preface, Section IV)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	
<b>(Harbors and Navigation Code)</b>														
131	<u>1</u>	M Obstructing Navigable Waters	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
133	<u>2</u>	M Discharging Oil	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
300	<u>3</u>	M Willful Damage to or Setting Adrift a Vessel Under 10 Tons	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
301	<u>3</u>	M Willful Damage to or Setting Adrift a Vessel of 10 Tons or More	500	500	350.00	250	250	100	100		2,050.00	40	30	2,120.00
303	<u>3</u>	M Damage to or Setting Adrift Log/Lumber Raft	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
307 (a)	<u>4</u>	I Mooring to or Hanging on With a Vessel to Buoy or Beacon	50	50	35.00	25	25	10	10		205.00	40	35	280.00
307 (b)	<u>3</u>	M Removing, Damaging, or Destroying Buoy or Beacon	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
308	<u>3</u>	M Mooring to or Damaging Federal Buoy or Beacon	500	500	350.00	250	250	100	100		2,050.00	40	30	2,120.00
505.5 (b-c)	<u>5</u>	M Obtaining Possession of Vessel by Fraud, Trick, or Device	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
525 (a)	<u>6</u>	I Abandonment of Vessel	1,000	1,000	700.00	500	500	200	200		4,100.00	40	35	4,175.00
571	<u>7</u>	M Unlawful Taking or Possession of Wrecked Property	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
652 (c)	<u>8</u>	I Vessel Does Not Meet Standards	50	50	35.00	25	25	10	10		205.00	40	35	280.00
652 (d)	<u>9</u>	M Failure to Obey Termination Order	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
652.5 (c)	<u>10</u>	I Blue Light–Unauthorized Use	50	50	35.00	25	25	10	10		205.00	40	35	280.00
652.5 (d)	<u>10</u>	I Failure to Yield to Blue Light or Siren	50	50	35.00	25	25	10	10		205.00	40	35	280.00
652.5 (e)	<u>10</u>	I Failure of Cable Ferry Operator to Provide Clear Course for Law Enforcement	50	50	35.00	25	25	10	10		205.00	40	35	280.00
654 (b)	<u>11</u>	I Improper Mufflers/Use of Cutouts	50	50	35.00	25	25	10	10		205.00	40	35	280.00
654.05 (a)(1-3)	<u>11</u>	I Motorized Vessel–Noise Level	50	50	35.00	25	25	10	10		205.00	40	35	280.00
654.06	<u>11</u>	I Motorized Vessel for Sale–Noise Level	50	50	35.00	25	25	10	10		205.00	40	35	280.00
655 (a)	<u>12</u>	I Reckless or Negligent Operation by Riding on Bow, Gunwale, or Transom of Vessel Propelled by Machinery	50	50	35.00	25	25	10	10		205.00	40	35	280.00

**BOATING BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	
655	(a)	<u>13</u>	M Reckless or Negligent Operation	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
655	(b)	<u>14</u>	M Reckless or Negligent Operation—Under Influence of Liquor or Drugs	650	650	455.00	325	325	130	130		2,665.00	40	30	2,735.00
655	(c)	<u>14</u>	M Operation of Recreation Vessel or Manipulation of Skis/Aquaplane If Blood Alcohol .08 or More	500	500	350.00	250	250	100	100		2,050.00	40	30	2,120.00
655	(d)	<u>14</u>	M Operation of Vessel Other Than Recreational Vessel If Blood Alcohol .04 or More	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
655	(e)	<u>14</u>	M Operation of Vessel/Manipulation of Water Skis/Aquaplane and Addicted to Drug	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
655	(f)	<u>15</u>	M Operation of Vessel/Manipulation of Water Skis/ Aquaplane While Under Influence of Alcohol or Any Drug	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
655.05		<u>16</u>	M Violation of 24-hour Nonoperation of Vessel Order	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
655.2	(a)	<u>17</u>	I Power Boats—Speed Restrictions	50	50	35.00	25	25	10	10		205.00	40	35	280.00
655.3		<u>18</u>	I Equipment on Vessels	50	50	35.00	25	25	10	10		205.00	40	35	280.00
655.3		<u>19</u>	M Use of Vessels	75	80	56.00	40	40	15	16		322.00	40	30	392.00
655.4		<u>20</u>	M Crew Member Under Influence of Liquor/Drugs Causes Death/Serious Injury	400	400	280.00	200	200	80	80		1,640.00	40	30	1,710.00
655.7	(a-d)	<u>21</u>	I Operation of Personal Watercraft	50	50	35.00	25	25	10	10		205.00	40	35	280.00
656	(a)	<u>22</u>	M Hit and Run/Assist at Collision	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
656	(d)	<u>22</u>	M Accident or Collision Report Required	200	200	140.00	100	100	40	40		820.00	40	30	890.00
656.1		<u>22</u>	M Operator of Vessel Involved in Accident Resulting in Property Damage	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
656.2		<u>23</u>	M Operator of Vessel Involved in Accident Resulting in Personal Injury	1,000	1,000	700.00	500	500	200	200		4,100.00	40	30	4,170.00
656.3		<u>23</u>	M Operator of Vessel Involved in Accident Resulting in Death or Disappearance	2,000	2,000	1,400.00	1,000	1,000	400	400		8,200.00	40	30	8,270.00
658	(a)	<u>24</u>	I Operation of Vessels Towing Persons on Water Skis or Aquaplanes—Requirement for Person 12 Years of Age or Older to Be Aboard in Addition to Driver	80	80	56.00	40	40	16	16		328.00	40	30	398.00
658	(b)	<u>24</u>	I Prohibited Hours	80	80	56.00	40	40	16	16		328.00	40	30	398.00
658	(d)	<u>25</u>	M Cause Collision	400	400	280.00	200	200	80	80		1,640.00	40	30	1,710.00

**BOATING BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*Preface, Section IV)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>	
658	(e) <u>25</u>	M Dangerous Operation	400	400	280.00	200	200	80	80		1,640.00	40	30	1,710.00
658.3	(a) <u>26</u>	I Children Under 13 Years Required to Wear Personal Flotation Device	50	50	35.00	25	25	10	10		205.00	40	35	280.00
658.5	(a) <u>27</u>	I Person Under 16 Years of Age Operating a Motor Vessel as Prohibited	50	50	35.00	25	25	10	10		205.00	40	35	280.00
658.5	(b) <u>27</u>	I Person Under 16 Years of Age Operating a Vessel as Prohibited	50	50	35.00	25	25	10	10		205.00	40	35	280.00
658.5	(d) <u>27</u>	I Permitting Person Under 16 Years of Age to Operate a Vessel as Prohibited	50	50	35.00	25	25	10	10		205.00	40	35	280.00
658.7	(a) <u>28</u>	I Ski Flag Requirement	15	20	14.00	10	10	3	4		76.00	40	35	151.00
659	<u>28</u>	I Unlawful Marking of Waters	50	50	35.00	25	25	10	10		205.00	40	35	280.00
660	(b) <u>29</u>	M Violation of Special Rules and Regulations	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
660	(c)(1) <u>29</u>	M Violation of Local Emergency Rules and Regulations	250	250	175.00	125	125	50	50		1,025.00	40	30	1,095.00
663.6	<u>29</u>	M Vessel to Stop on Lawful Order	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
665	<u>29</u>	M Violation of Promise to Appear	100	100	70.00	50	50	20	20		410.00	40	30	480.00
673	<u>30</u>	I Boat Livery Recordkeeping	50	50	35.00	25	25	10	10		205.00	40	35	280.00
674	<u>30</u>	I Livery Boat Equipment Requirements	50	50	35.00	25	25	10	10		205.00	40	35	280.00
681	(a) <u>31</u>	I Operation or Idling of Motorized Vessel While Person Is Teak Surfing, Platform Dragging, or Bodysurfing Behind the Vessel	50	50	35.00	25	25	10	10		205.00	40	35	280.00
681	(b) <u>31</u>	I Operation or Idling of Motorized Vessel While Person Is on or Holding Onto Swim Platform, Swim Deck, Swim Step, or Swim Ladder of the Vessel	50	50	35.00	25	25	10	10		205.00	40	35	280.00
754	<u>30</u>	I Record of Stored Vessels	50	50	35.00	25	25	10	10		205.00	40	35	280.00
761		M License Required-For-Hire Vessel	100	100	70.00	50	50	20	20		410.00	40	30	480.00
780	(a) <u>32</u>	M Illegal Discharge of Sewage	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00
780	(b)(1-2) <u>33</u>	I Illegal Discharge of Sewage in No-discharge Area	150	150	105.00	75	75	30	30		615.00	40	35	690.00
780	(b)(1-2) <u>34</u>	M Illegal Discharge of Sewage in No-discharge Area	300	300	210.00	150	150	60	60		1,230.00	40	30	1,300.00

**BOATING BAIL AND PENALTY SCHEDULE**  
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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine EMAT PA* Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **	
				10/10	7.00	5/10	5.00	20%	2.00	4	40	1		
<b>(California Code of Regulations, Title 13)</b>														
190.00 (a,b)	I	Number Display	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
190.01	I	Registration Stickers	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
190.08 (c)	I	Dealer Number Display	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
190.15	I	Hull Identification Numbers	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
<b>(California Code of Regulations, Title 14)</b>														
6555-6575	I	Equipment Requirements	35	40	28.00	20	20	7	8	158.00	40	35	233.00	
6576	I	Use of Liquefied Petroleum Gas	35	40	28.00	20	20	7	8	158.00	40	35	233.00	
6600.1	<sup>35</sup> I	Pilot Rules/Rules of the Road	50	50	35.00	25	25	10	10	205.00	40	35	280.00	
6692	I	Visual Distress Signals Required	35	40	28.00	20	20	7	8	158.00	40	35	233.00	
6695	<sup>36</sup> I	Blinding Lights	50	50	35.00	25	25	10	10	205.00	40	35	280.00	
7003	I	Unlawful Placement of Diver Precaution Markers	50	50	35.00	25	25	10	10	205.00	40	35	280.00	
7008 (c)	I	Diver Markers–Precaution	50	50	35.00	25	25	10	10	205.00	40	35	280.00	
7008 (d)	I	Diver Markers–Improper Display	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
7009 (c)	I	Ski Flag–Precaution	50	50	35.00	25	25	10	10	205.00	40	35	280.00	
7009 (d)	I	Ski Flag–Improper Display	25	30	21.00	15	15	5	6	117.00	40	35	192.00	
<b>(California Code of Regulations, Title 14)</b>														
7504 (a)	M	For-Hire Operator's License Terms and Conditions of Use	100	100	70.00	50	50	20	20	410.00	40	30	480.00	
7504 (b)	M	For-Hire Operator's License Terms and Conditions of Use–Change of Address	35	40	28.00	20	20	7	8	158.00	40	30	228.00	
7504 (c)	M	For-Hire Operator's License Terms and Conditions of Use–Possession	35	40	28.00	20	20	7	8	158.00	40	30	228.00	
<b>(Vehicle Code)</b>														
9850	<sup>37</sup> I	Numbering of Undocumented Vessel	25	30	21.00	15	15	5	6	121.00	40	35	1	197.00

**BOATING BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **	
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>	<b>4</b>		<b>40</b>	<b>1</b>		
9853	(a)	<sup>38</sup>	I Application for/Display of Number	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9853.2		<sup>37</sup>	I Number Display/Certificate of Number	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9853.3		<sup>37</sup>	I Retention of Certificate	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9853.8		<sup>39</sup>	I Illegal Operation of Vessel Without Required Numbering or in Noncompliance With Emission Standards	250	250	175.00	125	125	50	50	4	1,029.00	40	35	1	1,105.00
9855		<sup>37</sup>	I Change of Ownership	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9864		<sup>37</sup>	I Wrecking/Junking/Destruction/Abandonment of Undocumented Vessel	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9865		<sup>37</sup>	I Change of Address	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9866		<sup>37</sup>	I Display of Other Numbers	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9871		<sup>37</sup>	I Hull Identification Number	25	30	21.00	15	15	5	6	4	121.00	40	35	1	197.00
9872		<sup>38</sup>	M Defacing, Destroying, or Altering Hull Identification Number	80	80	56.00	40	40	16	16	4	332.00	40	30	1	403.00

**Notes**

- <sup>1</sup> Per H&N 131(b): Fine: "... not to exceed \$1,000 ... ."
- <sup>2</sup> Per H&N 133(c): Fine: "... not to exceed \$1,000 ... ."
- <sup>3</sup> Per H&N 309: Fine: "... not to exceed \$1,000 ... ."
- <sup>4</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 307(a): Fine "... not more than \$100."
- <sup>5</sup> Per H&N 505.5(d): Fine: "... not to exceed \$1,000 ... ."
- <sup>6</sup> Per H&N 525(c): Fine: "... not less than \$1,000 nor more than \$3,000."
- <sup>7</sup> Per H&N 571(b): Fine: "... not to exceed \$1,000 ... ."
- <sup>8</sup> Per H&N 668 (a): Fine "... not more than \$250."
- <sup>9</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."
- <sup>10</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 668(b)(4): Fine "... not more than \$100."
- <sup>11</sup> Per H&N 668 (a): Fine "... not more than \$250."
- <sup>12</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 668(b)(3)(B): Fine "... not more than \$250."
- <sup>13</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."
- <sup>14</sup> Per H&N 668(e) or 668(f): Fine "... not more than \$1,000."
- <sup>15</sup> Per H&N 668(g) or 668(h): Fine "... not less than \$250 or more than \$5,000."
- <sup>16</sup> ~~Sen. Bill 1162 (Stats. 2014, ch. 67)~~. Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."

**BOATING BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*Preface, Section IV)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	EMAT PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess. Night Court	"Total Bail" **
17	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(5): Fine "... not more than \$100."												
18	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(1)(A): Fine "... not more than \$100."												
19	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(1)(A): Fine "... not more than \$100."												
20		Per H&N 668(e): Fine "... not more than \$1,000."												
21		Per H&N 668(a): Fine "... not more than \$250."												
22	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."												
23		Per H&N 668(c)(1): Fine "... not less than \$1,000 or more than \$10,000 ... ." Per H&N 668(c)(2): "In imposing the minimum fine ... the court shall take into consideration the defendant's ability to pay the fine and, in the interests of justice for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision."												
24	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(2): Fine "... not more than \$200."												
25	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."												
26		Per H&N 668(a): Fine "... not more than \$250."												
27		Per H&N 668(d): Fine "... not more than \$100."												
28		Per H&N 668(a): Fine "... not more than \$250."												
29	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(3)(A): Fine "... not more than \$1,000."												
30		Per H&N 668(a): Fine "... not more than \$250."												
31		Per H&N 681(g): Fine of "... up to \$100."												
32		Per H&N 780(c): Fine: "... not to exceed \$1,000 ... ."												
33		Per H&N 780(b): "The first violation of this subdivision is an infraction punishable by a fine of up to \$500."												
34		Per H&N 780(b): "A second or subsequent violation of this subdivision by any one person is a misdemeanor." Per H&N 780(c): Fine: "... not to exceed \$1,000 ... ."												
35	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(1)(C): Fine "... not more than \$100."												
36	<del>Sen. Bill 1162 (Stats. 2014, ch. 67).</del>	Per H&N 668(b)(1)(B): Fine "... not more than \$100."												
37		Per VC 9875, VC 42001(a): Fine "... not exceeding \$100." Per GC 76000.10(c)(1): "... penalty of \$4 shall be imposed upon every conviction of a violation of the Vehicle Code ... ."												
38		Per GC 76000.10(c)(1): "... penalty of \$4 shall be imposed upon every conviction of a violation of the Vehicle Code ... ."												
39		Per VC 9853.8(b): "fine of \$250." Per GC 76000.10(c)(1): "... penalty of \$4 shall be imposed upon every conviction of a violation of the Vehicle Code ... ."												

**FORESTRY BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (Public Resources Code)

Section	Notes	Level	Offense	Base Fine	State PA	County PA/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4154		M	Failure to Obey Summons to Suppress Forest Fire	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4165	(a-e)	M	Unlawful Conduct at Forest Fire	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4255	(a)	M	Smoking or Building Fires in Hazardous Fire Area	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4291	(a-f)	I	Clearance, etc., Required Around Structure	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4292		M	Clearance Required—Power Pole	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4293	(a-c)	M	Clearance Required—Power Line	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4297	<sup>1</sup>	M	Violation of Proclamation Closing Area to Hunting and Fishing	200	200	140.00	100	100	40	40	820.00	40	30	890.00
4331		M	Permit and Tools Required for Smoking and Building Campfires on National Forest Lands	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4373 /4374	<sup>2</sup>	M	Clearance Required—Solid Waste Facility	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4421		M	Burning Lands of Another	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4422	(a,b)	M	Allowing Fire to Escape	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4423		M	Permit Required for Burning	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4423.2	(b)	M	Violation of Terms of Restricted Temporary Burning Permit	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4423.5		M	Restricted Use of Fire	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4426		M	Setting Backfire Without Supervision	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4427	(a,b)	M	Clearance and Tool Requirements	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4428	(a-c)	M	Tool Box and Seal Requirements for Industrial Operations	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4429		M	Tools for Industrial and Agricultural Camps	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4430		M	Force Pump/Water Requirement for Steam-Operated Equipment, etc.	100	100	70.00	50	50	20	20	410.00	40	30	480.00



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					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4431		M	Tool Requirement–Portable Gasoline-Powered Tools	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4432		M	Neglecting a Campfire	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4433		M	Permit Required for Campfire	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4435		M	Causing Fire With Equipment	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4436		M	Refusing to Fight Forest Fire	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4437		M	Flammable Mill Waste–Disposal Required	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4438		M	Burning Mill Waste in Enclosed Device, Permit/Clearance Required	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4439		M	Mill Waste–Open Burning Permit and Clearance Required	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4440	(a,b)	M	Flammable Forest Product Residue Accumulation–Clearance Required	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4442	(a,b)	M	Spark Arrester Required, Internal Combustion Engines	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4442.5		M	Spark Arrester Required, Public Notice Required for Sales, Lease, and Rent	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4442.6 (a)	<sup>3</sup>	I	Sell, Offer to Sell, Lease, or Rent Specified Equipment With Internal Combustion Engine Without Required Warning Label	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4442.6 (b)	<sup>3</sup>	I	Manufacture of Specified Equipment With Internal Combustion Engine Without Attaching Required Warning Label	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4443		M	Internal Combustion Engines–Handheld, Portable, and Multiposition; Construction Requirements for Use	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4445		M	Tracer Ammunition, Restricted Use	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4446	(a-c)	M	Incinerator Standards	100	100	70.00	50	50	20	20	410.00	40	30	480.00

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 (Public Resources Code)

Section	Notes	Level	Offense	Base Fine	State PA	County PA/10	DNA PA*	Court PA*	Surcharge*	EMS PA*	Fine & PA Subtotal	Court OPS	Cony. Assess.	"Total Bail" **
				10/10	7.00	5/10	5.00	20%	2.00			40		

**Notes**

- <sup>1</sup> Per PRC 4299: "... punished by a fine of not less than \$100 nor more than \$2,000 or by imprisonment in the county jail for not less than 10 days nor more than 90 days or both that fine and imprisonment."
- <sup>2</sup> Per PRC 4376: "A person who maintains a solid waste facility in violation of this chapter is guilty of a misdemeanor, and shall be punished for a first conviction by a fine of not to exceed \$500, and, for a second or subsequent conviction within five years of a prior conviction of a violation of this chapter, by a fine not less than \$250 or more than \$1,000 or imprisonment in the county jail for a period not to exceed 30 days, or both that fine and imprisonment. Each and every day of violation is a separate and distinct offense."
- <sup>3</sup> Per PRC 4442.6(c): "... an infraction punishable by a fine of not more than \$100."

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		
<b>(Fish and Game Code)</b>														
<b>GENERAL LICENSE PROVISIONS</b>														
1052	(a-f)	M	Unlawful Use of License or Tag	200	200	140.00	100	100	40	40	820.00	40	30	890.00
1054		M	False Statement to Obtain License	200	200	140.00	100	100	40	40	820.00	40	30	890.00
1059	(a)	<sup>1</sup> M	Failure of License Agent to Account for Licenses, Stamps, Tags, or Fees	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
<b>TAKING AND POSSESSING</b>														
2000	(a)	M	Unlawful Taking or Possessing of Fish or Wildlife	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2001	(a-c)	M	Unlawful Possession After Season	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2001	(a, c)	<sup>2</sup> M	Unlawful Possession of Trophy Deer, Elk, Antelope, or Bighorn Sheep After Season	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
2001	(b)	<sup>3</sup> M	Unlawful Possession of Wild Turkey After Season	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
2004		M	Property Damage While Hunting or Fishing	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2005	(a-c)	M	Unlawful Use of Artificial Light	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
2005	(a-c)	<sup>4</sup> M	Unlawful Use of Artificial Light to Assist in Taking of Trophy Deer, Elk, Antelope, or Bighorn Sheep	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
2005	(a, c)	<sup>5</sup> M	Unlawful Use of Artificial Light to Assist in Taking of Wild Turkey	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
2006	(a)	M	Loaded Gun in Vehicle	100	100	70.00	50	50	20	20	410.00	40	30	480.00
2010	(a)	M	Unlawful Possession or Use of a Shotgun	100	100	70.00	50	50	20	20	410.00	40	30	480.00
2011.5		<sup>6</sup> M	Unlawful Removal of Hunting Dog Collar	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2012		M	Failure to Show License, Equipment, or Game	100	100	70.00	50	50	20	20	410.00	40	30	480.00
2015	(a)	M	Unlawful Possession of Bird, Fish, Etc., in Restaurant or Eating Establishment	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
2016		M	Trespass While Hunting	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2018		M	Unlawful Posting or Destruction of Signs	200	200	140.00	100	100	40	40	820.00	40	30	890.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
2080		M	Importing/Taking/Possessing Any Rare or Endangered Animal	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
<b>INFORMATION, TRANSPORTATION, AND SHELTERING OF RESTRICTED LIVE WILD ANIMALS</b>														
2118		M	Unlawful Possession of Prohibited Species	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
2121		M	Allowing a Legally Imported Wild Animal to Escape	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2361		M	Importation of Salmon	200	200	140.00	100	100	40	40	820.00	40	30	890.00
2576		M	Capturing or Transporting for Sale, or Selling Wild Rodents	100	100	70.00	50	50	20	20	410.00	40	30	480.00
<b>METHODS OF TAKING</b>														
3000		M	Hunting During Closed Hours	200	200	140.00	100	100	40	40	820.00	40	30	890.00
3001		M	Hunting While Intoxicated	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3002		M	Shooting From Boat, Vehicle, or Airplane	200	200	140.00	100	100	40	40	820.00	40	30	890.00
3003	(a)	<sup>7</sup> M	Unlawful Hunting With a Gun or Device Accessed Via an Internet Connection	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3003	(b)(1)	<sup>8</sup> M	Owning or Operating Online Shooting Range, Site, or Gallery	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3003	(b)(2)	<sup>9</sup> M	Create, Maintain, or Utilize Internet Web Site or Service by Other Means for Purpose of Online Hunting	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3003	(c)	<sup>10</sup> M	Possession or Confinement of Bird or Mammal for Online Hunting	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3003	(d)	<sup>11</sup> M	Import or Export of Bird or Mammal Killed by Online Hunting	350	350	245.00	175	175	70	70	1,435.00	40	30	1,505.00
3004	(a)	<sup>12</sup> M	Shooting Within 150 Yards of Dwelling	150	150	105.00	75	75	30	30	615.00	40	30	685.00
3004	(b)	<sup>13</sup> M	Unlawful Discharge of Firearm, Arrow, or Crossbow Bolt Across a Public Road or Way	150	150	105.00	75	75	30	30	615.00	40	30	685.00
3004.5	(a)(1)	<sup>14</sup> I	Use of Unlawful Rifle or Pistol Ammunition	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
3005		M	Taking Birds or Mammals With Unlawful Devices	150	150	105.00	75	75	30	30	615.00	40	30	685.00

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
3012		M	Use of Amplified Animal Sounds to Assist in Taking	100	100	70.00	50	50	20	20	410.00	40	30	480.00
<b>DOMESTICATED GAME BREEDING</b>														
3200		M	License for Breeding	100	100	70.00	50	50	20	20	410.00	40	30	480.00
<b>GENERAL PROVISIONS</b>														
3501		M	Unlawful Driving of Game Birds	100	100	70.00	50	50	20	20	410.00	40	30	480.00
3503	<sup>15</sup>	M	Taking, Possessing, or Destroying the Nest or Eggs of Any Birds	400	400	280.00	200	200	80	80	1,640.00	40	30	1,710.00
<b>FULLY PROTECTED BIRDS</b>														
3511	(a)(1)	M	Taking or Possession of Fully Protected Birds	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
<b>NONGAME BIRDS</b>														
3800	<sup>16</sup>	M	Taking of One Nongame Bird	400	400	280.00	200	200	80	80	1,640.00	40	30	1,710.00
			(Each Additional Nongame Bird)	100	100	70.00	50	50	20	20	410.00	0	0	410.00
<b>GAME MAMMALS</b>														
3960	(b)	M	Unlawful to Allow Dog to Pursue Big Game Mammal During Closed Season; Protected, Rare, or Endangered Mammal; Bear or Bobcat; or Any Mammal in Game Refuge or Ecological Reserve	400	400	280.00	200	200	80	80	1,640.00	40	30	1,710.00
<b>TRAPPING PROVISIONS</b>														
4004	(a,b, d-g)	<sup>17</sup> M	Trapping Violations	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4004	(c)	<sup>18</sup> M	Setting or Maintaining Trap Without Required Identifying Mark	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge* /10	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
<b>TAKING DEER</b>														
4304		M	Waste of Game Meat	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4304	19	M	Waste of Trophy Deer, Elk, Antelope, or Big Horn Sheep Meat	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
4304	20	M	Waste of Trophy Turkey Meat	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
4330		M	No Deer License Tag	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4330	21	M	No License Tag for Trophy Deer, Elk, Antelope, or Big Horn Sheep	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
4330	22	M	No License Tag for Trophy Turkey	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
4336	(a,b)	M	Untagged Deer	150	150	105.00	75	75	30	30	615.00	40	30	685.00
<b>BURRO</b>														
4600	(a)	M	Unlawful Killing or Capture of Undomesticated Burro	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
<b>WILD PIG</b>														
4657		M	Wild Pig License Tag Violation	150	150	105.00	75	75	30	30	615.00	40	30	685.00
<b>FULLY PROTECTED MAMMALS</b>														
4700	(a)(1)	23	M Taking or Possession of Fully Protected Mammal	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
<b>BEAR</b>														
4753		M	Bear Tag License Violation	150	150	105.00	75	75	30	30	615.00	40	30	685.00
4758	24	M	Sale or Purchase of Bear Meat or Parts	3,250	3,250	2,275.00	1,625	1,625	650	650	13,325.00	40	30	13,395.00
4758	25	M	Possession of Three or More Bear Gall Bladders	10,000	10,000	7,000.00	5,000	5,000	2,000	2,000	41,000.00	40	30	41,070.00

**FULLY PROTECTED REPTILES AND AMPHIBIANS**

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
5000		M	Selling, Purchasing, Harming, Possessing, Transporting, or Shooting Desert Tortoise	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
5050	(a)(1)	M	Taking or Possession of Fully Protected Reptile or Amphibian	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
<b>FISH-GENERAL PROVISIONS</b>														
5508		<sup>26</sup> M	Fish of Indeterminate Size (For Each Additional Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
<b>FULLY PROTECTED FISH</b>														
5515	(a)	M	Taking or Possession of Fully Protected Fish	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
5521- 5521.5	(a)	<sup>27</sup> M	Taking, Possessing, or Landing Abalone for Commercial or Recreational Purposes From Designated Waters	15,000	15,000	10,500.00	7,500	7,500	3,000	3,000	61,500.00	40	30	61,570.00
<b>WATER POLLUTION-GENERAL PROVISIONS</b>														
5650		<sup>28</sup> M	Depositing/Permitting to Pass Into Waters Deleterious Materials	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
5652	(a)	M	Littering Within 150 Feet of Water	100	100	70.00	50	50	20	20	410.00	40	30	480.00
<b>FISH PLANTING AND PROPAGATION</b>														
6400		<sup>29</sup> M	Unlawful Placing of Fish, Animal, or Plant in Waters	15,000	15,000	10,500.00	7,500	7,500	3,000	3,000	61,500.00	40	30	61,570.00
<b>SPORT FISHING-GENERAL PROVISIONS</b>														
7121		M	Unlawful Sale or Purchase of Fish	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
7121		<sup>30</sup> M	Unlawful Sale or Purchase of Abalone	15,000	15,000	10,500.00	7,500	7,500	3,000	3,000	61,500.00	40	30	61,570.00
<b>SPORT FISHING LICENSES</b>														
7145	(a)	<sup>31</sup> I	Fishing Without a License -With Proof of Valid License to Court	100 25	100 30	70.00 21.00	50 15	50 15	20 5	20 6	410.00 117.00	40 40	35 35	485.00 192.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		
<b>COMMERCIAL SALMON TROLLERS ENHANCEMENT AND RESTORATION</b>														
7860	<sup>32</sup>	M	No Commercial Fishing Stamps for Salmon	200	200	140.00	100	100	40	40	820.00	40	30	890.00
8603		M	Unlawful Use of Net, Trap, or Line	400	400	280.00	200	200	80	80	1,640.00	40	30	1,710.00
<b>COMMERCIAL FISHING-NETS</b>														
8670	<sup>33</sup>	M	Unlawful Use or Possession of Net for Taking Certain Fish	400	400	280.00	200	200	80	80	1,640.00	40	30	1,710.00
<b>GILL AND TRAMMEL NETS</b>														
8685.5		M	Prohibited Use of Gill Nets to Take Certain Fish	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
8685.6		M	Prohibited Possession/Sale of Fish Taken With Gill Net	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
8685.7		M	Prohibited Purchase of Fish Taken by Gill Net	2,000	2,000	1,400.00	1,000	1,000	400	400	8,200.00	40	30	8,270.00
<b>REFUGES</b>														
10500	(a-g)	<sup>34</sup>	M Acts Unlawful in Refuge	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
<b>GENERAL PROVISIONS</b>														
12003.1	(a)	<sup>35</sup>	M Unlawful Taking of Animal	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
12012	(a)	<sup>36</sup>	M Illegal Poaching of Wildlife for Profit	10,000	10,000	7,000.00	5,000	5,000	2,000	2,000	41,000.00	40	30	41,070.00
12013	(a)	<sup>37</sup>	M Taking or Possessing More than Three Times the Bag or Possession Limit	10,000	10,000	7,000.00	5,000	5,000	2,000	2,000	41,000.00	40	30	41,070.00
12013.5	(a)	<sup>38</sup>	M Violation Committed With Use of Signal Emitting Device for Taking of Bear for Purpose of Selling or Trafficking in Bear Parts	10,000	10,000	7,000.00	5,000	5,000	2,000	2,000	41,000.00	40	30	41,070.00

## AQUACULTURE



## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
15202		M	Placement of Prohibited Species in Designated Waters	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
15509		M	Violation of Established Aquatic Quarantine	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
<b>(California Code of Regulations, Title 14)</b>														
1.17	<sup>39</sup>	I	Excess of Bag Limit–Fish (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
1.17		M	Excess of Bag Limit–Fish (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
1.62	<sup>40</sup>	I	Undersize Fish (For Each Undersize Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
1.62		M	Undersize Fish (For Each Undersize Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
1.74	<sup>41</sup>	I	Sport Fishing Report Card and Tagging Requirements	100	100	70.00	50	50	20	20	410.00	40	35	485.00
1.74	<sup>42</sup>	M	Sport Fishing Report Card and Tagging Requirements	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
2.00	<sup>43</sup>	I	Fishing Methods–With 2 Poles –With Net	100 150	100 150	70.00 105.00	50 75	50 75	20 30	20 30	410.00 615.00	40 40	35 35	485.00 690.00
2.00		M	Fishing Methods–With 2 Poles –With Net	200 300	200 300	140.00 210.00	100 150	100 150	40 60	40 60	820.00 1,230.00	40 40	30 30	890.00 1,300.00
2.10	<sup>44</sup>	I	Fishing Methods–Hooks	100	100	70.00	50	50	20	20	410.00	40	35	485.00
2.10		M	Fishing Methods–Hooks	200	200	140.00	100	100	40	40	820.00	40	35	895.00
5.80	<sup>45</sup>	I	White Sturgeon (For Each Over-Limit or Illegal Size Fish)	250 50	250 50	175.00 35.00	125 25	125 25	50 10	50 10	1,025.00 205.00	40 0	35 0	1,100.00 205.00
5.80	<sup>46</sup>	M	White Sturgeon (For Each Over-Limit or Illegal Size Fish)	500 100	500 100	350.00 70.00	250 50	250 50	100 20	100 20	2,050.00 410.00	40 0	30 0	2,120.00 410.00
7.50	<sup>47</sup>	I	Waters With Special Fishing Regulations	100	100	70.00	50	50	20	20	410.00	40	35	485.00
7.50	<sup>48</sup>	M	Waters With Special Fishing Regulations	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
27.60	<sup>49</sup>	I	Fin Fish Limits (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.60	<sup>50</sup>	M	Fin Fish Limits (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
27.65	51	I	Filleting of Fish on Vessels (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.65	52	M	Filleting of Fish on Vessels (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.67	53	I	Transport of Recreational Finfish Through a Restricted Fishing Area Without Permit	100	100	70.00	50	50	20	20	410.00	40	35	485.00
27.67	54	M	Transport of Recreational Finfish Through a Restricted Fishing Area Without Permit	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
27.70	55	I	Trout in the Ocean (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.70	56	M	Trout in the Ocean (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.75	57	I	Salmon Closures (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.75	58	M	Salmon Closures (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.80	59	I	Salmon (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.80	60	M	Salmon (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.82	61	I	Management Areas, Seasons, Depths, Exceptions, and Fishery Closure Process Described (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.82	62	M	Management Areas, Seasons, Depths, Exceptions, and Fishery Closure Process Described (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.83	63	I	California Rockfish Conservation Area (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.83	64	M	California Rockfish Conservation Area (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
27.85	65	I	Striped Bass	100	100	70.00	50	50	20	20	410.00	40	35	485.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
27.85	66	M	(For Each Over-Limit Fish) Striped Bass	20 250	20 250	14.00 175.00	10 125	10 125	4 50	4 50	82.00 1,025.00	0 40	0 30	82.00 1,095.00
27.90	67	I	(For Each Over-Limit Fish) White Sturgeon	20 250	20 250	14.00 175.00	10 125	10 125	4 50	4 50	82.00 1,025.00	0 40	0 35	82.00 1,100.00
27.90	68	M	(For Each Over-Limit or Illegal Size Fish) White Sturgeon	50 500	50 500	35.00 350.00	25 250	25 250	10 100	10 100	205.00 2,050.00	0 40	0 30	205.00 2,120.00
27.92	69	I	(For Each Over-Limit or Illegal Size Fish) White Sturgeon Reporting and Tagging Requirements for Ocean Waters	100	100	70.00	50	50	20	20	410.00	40	35	485.00
27.92	70	M	White Sturgeon Reporting and Tagging Requirements for Ocean Waters	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
27.95	71	I	Sturgeon Closure (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
27.95	72	M	Sturgeon Closure (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.00	73	I	Grunion, California (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.00	74	M	Grunion, California (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.05	75	I	Garibaldi (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.05		M	Garibaldi (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.06	76	I	White Shark (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.06	77	M	White Shark (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.10	78	I	Giant (Black) Sea Bass (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.10	79	M	Giant (Black) Sea Bass (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.12	80	I	Gulf Grouper and Broomtail Grouper (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
28.12	<sup>81</sup>	M	Gulf Grouper and Broomtail Grouper (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.15	<sup>82</sup>	I	Halibut, California (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.15	<sup>83</sup>	M	Halibut, California (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.20	<sup>84</sup>	I	Halibut, Pacific (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.20	<sup>85</sup>	M	Halibut, Pacific (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.25	<sup>86</sup>	I	Barracuda, California (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.25	<sup>87</sup>	M	Barracuda, California (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.26	<sup>88</sup>	I	California Sheephead (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.26	<sup>89</sup>	M	California Sheephead (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.27	<sup>90</sup>	I	Lingcod (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.27	<sup>91</sup>	M	Lingcod (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.28	<sup>92</sup>	I	Cabezon (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.28	<sup>93</sup>	M	Cabezon (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.29	<sup>94</sup>	I	Kelp Greenling, Rock Greenling (For Each Over-Limit Fish)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
28.29	<sup>95</sup>	M	Kelp Greenling, Rock Greenling (For Each Over-Limit Fish)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
28.30	<sup>96</sup>	I	Kelp Bass, Barred Sand Bass, and Spotted Sand Bass	100	100	70.00	50	50	20	20	410.00	40	35	485.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.30	97	M	Kelp Bass, Barred Sand Bass, and Spotted Sand Bass	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.32	98	I	Pacific Bonito	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.32	99	M	Pacific Bonito	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.35	100	I	White Seabass	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.35	101	M	White Seabass	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.37	102	I	Yellowtail	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.37	103	M	Yellowtail	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.40	104	I	Broadbill Swordfish	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.40	105	M	Broadbill Swordfish	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.45	106	I	Surf Smelt (Night Smelt, Day Fish, Whitebait Smelt)	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.45	107	M	Surf Smelt (Night Smelt, Day Fish, Whitebait Smelt)	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.50	108	I	Marlin	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.50	109	M	Marlin	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.54	110	I	California Scorpionfish (Sculpin)	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.54	111	M	California Scorpionfish (Sculpin)	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.55	112	I	Rockfish (Sebastes)	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.55	113	M	Rockfish (Sebastes)	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.56	114	I	Leopard Shark	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.56	115	M	Leopard Shark	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.58	116	I	Ocean Whitefish	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.58	117	M	Ocean Whitefish	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.59	118	I	Surfperch	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.59	119	M	Surfperch	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.60	120	I	Herring Eggs	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Pound Over Limit)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.60	121	M	Herring Eggs	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Pound Over Limit)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.62	122	I	Herring	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.62	123	M	Herring	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Fish)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
28.65	124	I	Fin Fish—General Gear Restrictions	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.65	125	M	Fin Fish—General Gear Restrictions	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.70	126	I	Weight, Power Driven Gurdies, or Power Driven Winches	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.70	127	M	Weight, Power Driven Gurdies, or Power Driven Winches	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
28.75	128	I	Baited Traps for Shiner Surfperch, Pacific Staghorn Sculpin, and Longjaw Mudsuckers	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.75	129	M	Baited Traps for Shiner Surfperch, Pacific Staghorn Sculpin, and Longjaw Mudsuckers	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.80	130	I	Dip Nets and Hawaiian-Type Throw Nets	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.80	131	M	Dip Nets and Hawaiian-Type Throw Nets	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.85	132	I	Beach Nets	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.85	133	M	Beach Nets	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.90	134	I	Diving, Spearfishing	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.90	135	M	Diving, Spearfishing	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.91	136	I	Slurp Guns	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.91	137	M	Slurp Guns	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
28.95	138	I	Spears, Harpoons, and Bow and Arrow Fishing Tackle	100	100	70.00	50	50	20	20	410.00	40	35	485.00
28.95	139	M	Spears, Harpoons, and Bow and Arrow Fishing Tackle	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.00	140	I	Gear Used in Taking Grunion	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.00	141	M	Gear Used in Taking Grunion	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.05	142	I	Invertebrates-General	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.05	143	M	Invertebrates-General	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.10	144	I	Invertebrates-General	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.10	145	M	Invertebrates-General	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.15	146	I	Abalone	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Abalone)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.15	147	M	Abalone	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Abalone)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.20	148	I	Clams-General	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.20	149	M	Clams-General	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.25	150	I	Gaper Clams and Washington Clams	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.25	151	M	Gaper Clams and Washington Clams	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00

**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.30	152	I	Geoduck Clams	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.30	153	M	Geoduck Clams	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.35	154	I	Littleneck Clams, Soft-Shell Clams, Chiones, Northern Quahogs, and Cockles	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.35	155	M	Littleneck Clams, Soft-Shell Clams, Chiones, Northern Quahogs, and Cockles	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.40	156	I	Pismo Clams	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.40	157	M	Pismo Clams	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.45	158	I	Razor Clams	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.45	159	M	Razor Clams	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Clam)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.55	160	I	Mussels	100	100	70.00	50	50	20	20	410.00	40	35	485.00
			(For Each Over-Limit Mussel)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.55	161	M	Mussels	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
			(For Each Over-Limit Mussel)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
29.60	162	I	Rock Scallops	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.60	163	M	Rock Scallops	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.65	164	I	Speckled (Bay) Scallops	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.65	165	M	Speckled (Bay) Scallops	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.70	166	I	Squid	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.70	167	M	Squid	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.71	168	I	Moon Snails	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.71	169	M	Moon Snails	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.80	170	I	Crustacean Gear Restrictions	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.80	171	M	Crustacean Gear Restrictions	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00



**FISH AND GAME BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
29.85	172	I	Crabs (For Each Over-Limit Crab)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
29.85	173	M	Crabs (For Each Over-Limit Crab)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
29.86	174	I	Bay Shrimp (Grass Shrimp)	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.86	175	M	Bay Shrimp (Grass Shrimp)	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.87	176	I	Ghost Shrimp and Blue Mud Shrimp	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.87	177	M	Ghost Shrimp and Blue Mud Shrimp	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.88	178	I	Coonstripe Shrimp	100	100	70.00	50	50	20	20	410.00	40	35	485.00
29.88	179	M	Coonstripe Shrimp	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
29.90	180	I	Spiny Lobsters (For Each Over-Limit Lobster)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
29.90	181	M	Spiny Lobsters (For Each Over-Limit Lobster)	250 20	250 20	175.00 14.00	125 10	125 10	50 4	50 4	1,025.00 82.00	40 0	30 0	1,095.00 82.00
30.00	182	I	Kelp-General	100	100	70.00	50	50	20	20	410.00	40	35	485.00
30.00	183	M	Kelp-General	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
30.10	184	I	Prohibited Marine Plant Species	100	100	70.00	50	50	20	20	410.00	40	35	485.00
30.10	185	M	Prohibited Marine Plant Species	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
100	186	M	Abalone-Unlawful Taking for Commercial Purposes	15,000	15,000	10,500.00	7,500	7,500	3,000	3,000	61,500.00	40	30	61,570.00
106-182.1		M	Violation of Commercial Fishing Regulations	200	200	140.00	100	100	40	40	820.00	40	30	890.00
300		M	Pheasants-Season and Area (For Each Over-Limit Bird)	200 20	200 20	140.00 14.00	100 10	100 10	40 4	40 4	820.00 82.00	40 0	30 0	890.00 82.00
307	187	I	Tree Squirrels-Season and Area (For Each Over-Limit Animal)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
307		M	Tree Squirrels-Season and Area (For Each Over-Limit Animal)	200 20	200 20	140.00 14.00	100 10	100 10	40 4	40 4	820.00 82.00	40 0	30 0	890.00 82.00
308	188	I	Rabbits-Season and Area (For Each Over-Limit Animal)	100 20	100 20	70.00 14.00	50 10	50 10	20 4	20 4	410.00 82.00	40 0	35 0	485.00 82.00
308	189	M	Rabbits-Season and Area (For Each Over-Limit Animal)	200 20	200 20	140.00 14.00	100 10	100 10	40 4	40 4	820.00 82.00	40 0	30 0	890.00 82.00

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge* /10	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
310		M	Shooting Hours–Small Game Animal	200	200	140.00	100	100	40	40	820.00	40	30	890.00
310.5		M	Shooting Hours–Game Birds	200	200	140.00	100	100	40	40	820.00	40	30	890.00
311	<sup>190</sup>	I	Weapons or Methods Authorized	100	100	70.00	50	50	20	20	410.00	40	35	485.00
311	<sup>191</sup>	M	Weapons or Methods Authorized	200	200	140.00	100	100	40	40	820.00	40	30	890.00
352		M	Shooting Hours–Big Game	200	200	140.00	100	100	40	40	820.00	40	30	890.00
353		M	Methods–Big Game	200	200	140.00	100	100	40	40	820.00	40	30	890.00
360	(a,b)	M	Deer–Season and Area	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
360	(c)	M	(For Each Over-Limit Deer)	200	200	140.00	100	100	40	40	820.00	0	0	820.00
365	(a,b)	M	Bear–Season and Area	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
365	(c)	M	(For Each Over-Limit Bear)	250	250	175.00	125	125	50	50	1,025.00	0	0	1,025.00
365	(e)	M	Method of Take	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
502	(a)	M	Migratory Waterfowl–Season and Area	200	200	140.00	100	100	40	40	820.00	40	30	890.00
502	(b)	M	(For Each Over-Limit Bird)	20	20	14.00	10	10	4	4	82.00	0	0	82.00
506		M	Waterfowl–Shooting	200	200	140.00	100	100	40	40	820.00	40	30	890.00
507	<sup>192</sup>	I	Waterfowl–Method of Take	100	100	70.00	50	50	20	20	410.00	40	35	485.00
507	<sup>193</sup>	M	Waterfowl–Method of Take	200	200	140.00	100	100	40	40	820.00	40	30	890.00
700	(a)	M	Display of Fishing License	10	10	7.00	5	5	2	2	41.00	40	30	111.00
700	(b)	M	Hunting License in Possession	200	200	140.00	100	100	40	40	820.00	40	30	890.00
700	(b)	M	Hunting License in Possession–Without Proof of Correction	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00

### Notes

- <sup>1</sup> Per F&G 12002(b): "... fine of not more than \$2,000, imprisonment in a county jail for not more than one year, or both the fine and ..."
- <sup>2</sup> Per F&G 12013.3(a): "... fine of not less than \$5,000, nor more than \$40,000 ..."
- <sup>3</sup> Per F&G 12013.3(a): "... fine of not less than \$2,000, nor more than \$5,000 ..."
- <sup>4</sup> Per F&G 12013.3(a): "... fine of not less than \$5,000, nor more than \$40,000 ..."
- <sup>5</sup> Per F&G 12013.3(a): "... fine of not less than \$2,000, nor more than \$5,000 ..."
- <sup>6</sup> Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and ..."
- <sup>8</sup> Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and ..."
- <sup>9</sup> Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and ..."
- <sup>10</sup> Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and ..."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		
11			Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and imprisonment"											
12			Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and imprisonment"											
13			Per F&G 12002(a): "...fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or by both that fine and imprisonment"											
14			Per F&G 3004.5 "A person who violates any provision of this section is guilty of an infraction punishable by a fine of \$500."											
15			Per F&G 12002(c), except as specified in F&G 12001 and 12010: "...a fine of not more than \$5,000."											
16			Per F&G 12002(c), except as specified in F&G 12001 and 12010: "...a fine of not more than \$5,000."											
17			Per F&G 12002(a): "... punishment for a violation of this code that is a misdemeanor is a fine of not more than \$1,000, imprisonment in the county jail for not more than six months, or by both the fine and imprisonment." Per F&G 12002(b): punishment for a violation of subdivision (c) of Section 4004 is "... a fine of not more than \$2,000, imprisonment in the county jail for not more than one year, or both the fine and imprisonment"											
18			Per F&G 12002(a): "... punishment for a violation of this code that is a misdemeanor is a fine of not more than \$1,000, imprisonment in the county jail for not more than six months, or by both the fine and imprisonment." Per F&G 12002(b): punishment for a violation of subdivision (c) of Section 4004 is "... a fine of not more than \$2,000, imprisonment in the county jail for not more than one year, or both the fine and imprisonment"											
19			<del>Assem. Bill 1527 (Stats. 2015, ch. 154).</del> Per F&G 12013.3(a): "fine of not less than \$5,000, nor more than \$40,000."											
20			<del>Assem. Bill 1527 (Stats. 2015, ch. 154).</del> Per F&G 12013.3(a): "fine of not less than \$5,000, nor more than \$40,000."											
21			<del>Assem. Bill 1527 (Stats. 2015, ch. 154).</del> Per F&G 12013.3(a): "fine of not less than \$5,000, nor more than \$40,000."											
22			<del>Assem. Bill 1527 (Stats. 2015, ch. 154).</del> Per F&G 12013.3(a): "fine of not less than \$5,000, nor more than \$40,000."											
23			Per F&G 12003.2: "fine of not more than \$25,000 per unlawful taking, imprisonment in the county jail for the period prescribed in sections 12002 or 12008, or both the fine and imprisonment."											
24			Per F&G 12005(a): "punishment for each violation of Section 4758 shall include both of the following: (1) A fine of \$250 for each bear part. (2) A											
25			Per F&G 12005(c)(1), punishment for each violation of section 4758 that includes the possession of three or more bear gall bladders is punishable by both a fine of \$250 for each bear part, as required by F&G 12005(a)(1), and an additional fine of not more than \$10,000 dollars, imprisonment in a county jail for not more than one year, or both that fine and imprisonment. Per F&G 12005(c)(1)(B)(2): "If probation is granted, or execution or imposition of sentence is suspended, it shall be a condition thereof that the minimum term of three months shall be served in a county jail."											
26			Per F&G 12003.1: punishment "... not less than \$250 ... ."											

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		
27			Per F&G 12009(a): "... except as provided in Section 12006.6, the punishment for a violation of any provision of Section 5521 or 5521.5 ... is a fine of not less than \$15,000 or more than \$40,000 and imprisonment in the county jail for a period not to exceed one year. The court shall permanently revoke any commercial fishing license, commercial fishing permit, or sport fishing license issued by the department." Per F&G 12006.6: "... in addition to Section 12009, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 5521 or 5521.5, and the offense occurs in an area closed to the taking of abalone for commercial purposes, and the person takes or possesses more than 12 abalone at one time or takes abalone in excess of the annual bag limit, that person shall be punished by ... A fine of not less than \$15,000 or more than \$40,000."											
28			Per F&G 12002(b): " ... fine of not more than \$2,000, imprisonment in a county jail for not more than one year, or both the fine and											
29			Per F&G 12023: " ... punishable by all of the following: (1) Imprisonment in the county jail for not less than six months or more than one year, a fine of not more than \$50,000 for each violation, or both that imprisonment and fine ... ."											
30			Per F&G 12009(a): "... except as provided in Section 12006.6, the punishment for a violation ... of Section 7121, involving abalone, is a fine of not less than \$15,000 or more than \$40,000 and imprisonment in the county jail for a period not to exceed one year. The court shall permanently revoke any commercial fishing license, commercial fishing permit, or, sport fishing license issued by the department." Per F&G 12006.6: "... in addition to Section 12009, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 5521 or 5521.5, and the offense occurs in an area closed to the taking of abalone for commercial purposes, and the person takes or possesses more than 12 abalone at one time or more than 100 abalone during a calendar year, that person shall be punished by ... A fine of not less than \$15,000 or more than \$40,000."											
31			Per F&G 12002.2(a): " ... fine of not less than \$100 or more than \$1,000 ... ." Per F&G 12002.2(b), a court may reduce the fine for conviction to \$25 with proof of a license valid at time of arrest.											
32			Per F&G 7863, the section shall remain in effect until 1/1/19.											
33			Per F&G 12002(b): "... fine of not more than \$2,000, imprisonment in the county jail for not more than one year, or both the fine and imprisonment."											
34			Per F&G 12002(b): "... fine of not more than \$2,000, imprisonment in the county jail for not more than one year, or both the fine and imprisonment."											
35			Per F&G 12003.1(a): "... not less than \$500 and imprisonment in county jail for not less than 30 days for a second subsequent violation."											
36			Per F&G 12012(a): "... fine of not less than \$5,000, nor more than \$40,000 ... ."											
37			Per F&G 12013(a): "... fine of not less than \$5,000, nor more than \$40,000 ... ."											
38			Per F&G 12013.5(a): "fine of \$10,000 per bear part."											
39			Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."											
40			Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."											
41			Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."											

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>42</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>43</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>44</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>45</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>46</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>47</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>48</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>49</sup> (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>50</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>51</sup> (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>52</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>53</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... . "

<sup>54</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction "

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## FISH AND GAME BAIL AND PENALTY SCHEDULE

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
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<sup>59</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
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## FISH AND GAME BAIL AND PENALTY SCHEDULE

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
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<sup>70</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction "

<sup>71</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*	Surcharge*	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>72</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

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## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>75</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>76</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>77</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>78</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>79</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

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<sup>81</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>82</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>83</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>84</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>85</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>86</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."



## FISH AND GAME BAIL AND PENALTY SCHEDULE

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>87</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>88</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>89</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

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## FISH AND GAME BAIL AND PENALTY SCHEDULE

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

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<sup>94</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*	Surcharge*	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>95</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>96</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

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<sup>120</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... . "

<sup>121</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>122</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... . "

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*	Surcharge*	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>123</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>124</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>125</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>126</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>127</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>128</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>129</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>130</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>131</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>132</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>133</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>134</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>135</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>136</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>137</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>138</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>139</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>140</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>141</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>142</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>143</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>144</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>145</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>146</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>147</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>148</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>149</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>150</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."



## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>151</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>152</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

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Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

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<sup>172</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>173</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>174</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>175</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>176</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

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<sup>178</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*	Surcharge*	EMS PA*	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				10/10		7.00	5/10	5.00	20%	2.00		40		

<sup>179</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

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<sup>181</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>182</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."



## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>183</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>184</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>185</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

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<sup>187</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction "

<sup>188</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... . "

## FISH AND GAME BAIL AND PENALTY SCHEDULE

(\*See Preface, Section III) (\*\*See Preface, Section IV)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		

<sup>189</sup> Assem. Bill 298 (Stats. 2015, ch. 31). Per F&G 12000: "(a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor. (b) Notwithstanding subdivision (a), any person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than \$100 or more than \$1,000, or of a misdemeanor: (1) Section 2009. (2) Subdivision (a) of Section 6596. (3) Section 7149.8. (4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations. (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations. (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations. (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations. (8) Section 251.7 of Title 14 of the California Code of Regulations. (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations. (10) Sections 505, 507 to 510, inclusive, and 550 to 553, inclusive, of Title 14 of the California Code of Regulations. (10)(11) Sections 630 to 630.5, inclusive, of Title 14 of the California Code of Regulations. (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply: (A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or a commercial passenger fishing boat license issued pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6. (B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction."

<sup>190</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>191</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>192</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

<sup>193</sup> Per F&G 12000(b): " ... infraction punishable by a fine of not less than \$100 and not to exceed \$1,000 ... ."

**PUBLIC UTILITIES BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Public Utilities Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
			<b>10/10</b>		<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	<b>30</b>	
1038.5	M	Identification of Equipment, Passenger Stage Corporations	200	200	140.00	100	100	40	40	820.00	40	30	890.00
4669	M	Failure to Secure Liability Insurance Protection by For-Hire Vessel Operator	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5132	M	Identification of Equipment, Household Goods Carrier	200	200	140.00	100	100	40	40	820.00	40	30	890.00
5133	(a) <sup>1</sup>	M Operation as a Household Goods Carrier Without a Permit and Operating Authority as Required	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
5311	(a) <sup>2</sup>	M Noncompliance or Procuring, Aiding, or Abetting Specified Violation of a Household Goods Carrier or Agent	750	750	525.00	375	375	150	150	3,075.00	40	30	3,145.00
5311	(a) <sup>3</sup>	M Willful Noncompliance or Procuring, Aiding, or Abetting a Violation of a Household Goods Carrier or Agent	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
5314.5	M	Advertising as a Household Goods Carrier Without a Permit	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5371	M	Operations as a Charter-Party Carrier Without Certificate or Permit	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5385	M	Identification of Equipment, Charter-Party Carrier of Passengers	200	200	140.00	100	100	40	40	820.00	40	30	890.00
5386	M	Advertising as a Charter-Party Carrier of Passengers Without Stating Identification Symbol	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5386.5	M	Charter-Party Carrier of Passengers Advertising Its Services as a Taxicab	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5387 (a)	M	Charter-Party Carrier Operating Without Permit, Vehicle Identification, and Accident Liability Protection	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00

**PUBLIC UTILITIES BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Public Utilities Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	<b>30</b>	
5411	4	M Violation of Charter-Party Carrier Order, Decision, Rule, Regulation, Direction, Demand, Requirement, or Operating Permit or Certificate	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
5411.3	5	M Display of Improper Vehicle Identifying Symbol	750	750	525.00	375	375	150	150	3,075.00	40	30	3,145.00
5412	6	M Violation of Charter-Party Carrier Order, Decision, Rule, Regulation, Direction, Demand, Requirement, or Operating Permit or Certificate by Corporation or Person	450	450	315.00	225	225	90	90	1,845.00	40	30	1,915.00
5412.2 (a)		M Operating as a Charter-Party Carrier of Passengers or Taxicab Without Valid Certificate/Permit	750	750	525.00	375	375	150	150	3,075.00	40	45	3,160.00
5414.5		M Advertising as a Charter-Party Carrier of Passengers Without Certificate or Permit	450	450	315.00	225	225	90	90	1,845.00	40	46	1,931.00
5513 (a)		M Failure to Secure Required Liability Insurance Protection by Hot Air Balloon Operator	450	450	315.00	225	225	90	90	1,845.00	40	47	1,932.00
5513 (b)		M Operating as a Hot Air Balloon Operator Without a Local Permit When Required	1,000	1,000	700.00	500	500	200	200	4,100.00	40	48	4,188.00

**Notes**

- 1 Per PU 5311(b): "... fine of not more than \$10,000 ... ."
- 2 Per PU 5311(a): "... fine of not more than \$2,500... ."
- 3 Per PU 5311(a): "for a willful violation ... fine of not more than \$10,000 ... ."
- 4 Per PU 5411: "... fine of not less than \$1,000 and not more than \$5,000 ... ."
- 5 Per PU 5411.3: "... fine of not more than \$2,500 ... ."
- 6 Per PU 5412: "... fine of not more than \$2,000 ... ."

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4302	I	Payment of Fee for Use of Facilities Required	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4302	M	Payment of Fee for Use of Facilities Required	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4304	I	No Aircraft Landing or Takeoff Without Authorization	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4304	M	No Aircraft Landing or Takeoff Without Authorization	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4305 (a)	I	No Hunting or Fishing in a State Park	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4305 (a)	M	No Hunting or Fishing in a State Park	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4305 (b)	I	No Taking, Killing, or Injuring Wildlife in a State Park	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4305 (b)	M	No Taking, Killing, or Injuring Wildlife in a State Park	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4305 (e)	I	No Feeding of Posted Wildlife	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4305 (e)	M	No Feeding of Posted Wildlife	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4306	I	No Collecting/Destroying Vegetation in a State Park	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4306	M	No Collecting/Destroying Vegetation in a State Park	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4307	I	No Destruction of Geological Features in a State Park + Damages	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4307	M	No Destruction of Geological Features in a State Park + Damages	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4308	I	No Destruction of Archaeological Features in a State Park + Damages	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4308	M	No Destruction of Archaeological Features in a State Park + Damages	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4310	I	No Littering in a State Park	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4310	<sup>1</sup> M	No Littering in a State Park	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4311 (a)	I	No Fires Except in Appropriate Stove/ Fireplaces	50	50	35.00	25	25	10	10	205.00	40	35	280.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4311 (a)	M	No Fires Except in Appropriate Stove/ Fireplaces	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4311 (b)	I	No Unsafe Fires	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4311 (b)	M	No Unsafe Fires	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4311 (c)	I	No Fire or Smoking Where Posted	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4311 (c)	M	No Fire or Smoking Where Posted	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4312 (a,b,d)	I	No Dog or Animal Running Loose	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4312 (a,b,d)	M	No Dog or Animal Running Loose	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4312 (c)	I	Keeping Noisy, Vicious, or Dangerous Dogs or Animals	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4312 (c)	M	Keeping Noisy, Vicious, or Dangerous Dogs or Animals	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4312 (e)	I	No Dogs or Cats in Area Unless on a Leash	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4312 (e)	M	No Dogs or Cats in Area Unless on a Leash	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4312 (f)	I	No Animals in a Unit Except Under Control	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4312 (f)	M	No Animals in a Unit Except Under Control	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4312 (h)	I	No Grazing Without Authorization + \$30 Per Head	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4312 (h)	M	No Grazing Without Authorization + \$30 Per Head	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4313	I	No Weapons or Traps Except Where Authorized	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4313	M	No Weapons or Traps Except Where Authorized	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4314	I	No Fireworks Allowed	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4314	M	No Fireworks Allowed	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4316	I	No Photography/Filming for Commercial Purposes Without Authorization	100	100	70.00	50	50	20	20	410.00	40	35	485.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4316	M	No Photography/Filming for Commercial Purposes Without Authorization	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4317	I	No Juvenile Shall Violate Posted Curfew Hours	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4317	M	No Juvenile Shall Violate Posted Curfew Hours	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4318	I	No Loitering About Park Restrooms, Showers, etc.	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4318	M	No Loitering About Park Restrooms, Showers, etc.	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4319	I	No Dangerous Recreational Activities	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4319	M	No Dangerous Recreational Activities	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4320 (a)	I	Observation of Quiet Hours Required	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4320 (a)	M	Observation of Quiet Hours Required	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4320 (b)	I	No Outside Machinery Operated Without Permission	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4320 (b)	M	No Outside Machinery Operated Without Permission	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4320 (c)	I	No Noisy Disturbance During Specified Hours	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4320 (c)	M	No Noisy Disturbance During Specified Hours	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4321	I	Restrictions on Assembly	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4321	M	Restrictions on Assembly	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4322	I	No Nudity Except Where Authorized	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4322	M	No Nudity Except Where Authorized	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4323 (a)	I	Restrictions on Recreational Equipment	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4323 (a)	M	Restrictions on Recreational Equipment	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4323 (b)	I	Restrictions on Food Storage	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4323 (b)	M	Restrictions on Food Storage	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4323 (c)	I	Restrictions on Tents on Beaches	35	40	28.00	20	20	7	8	158.00	40	35	233.00



**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4323 (c)	M	Restrictions on Tents on Beaches	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4324 (a-c)	I	Requirements for Sanitation	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4324 (a-c)	M	Requirements for Sanitation	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4326	I	Violation of Posted Orders/Special Permits Prohibited	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4326	M	Violation of Posted Orders/Special Permits Prohibited	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4330	I	Restrictions for Use of Pesticides	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4330	M	Restrictions for Use of Pesticides	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4331	I	No Soliciting Without Authorization	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4331	M	No Soliciting Without Authorization	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4333	I	Restriction of Glass Containers Except as Authorized	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4333	M	Restriction of Glass Containers Except as Authorized	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4351	I	Restrictions in State Wilderness/Natural Preserves	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4351	M	Restrictions in State Wilderness/Natural Preserves	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4352	I	No Off-Highway Vehicles/Snowmobiles Unless Authorized	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4352	M	No Off-Highway Vehicles/Snowmobiles Unless Authorized	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4353	I	No Violations of Posted Speed Limits											[See Speed Chart]
4353	M	No Violations of Posted Speed Limits											[See Speed Chart]
4354	I	No Vehicle Operations That Endanger Persons/Animals	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4354	M	No Vehicle Operations That Endanger Persons/Animals	100	100	70.00	50	50	20	20	410.00	40	30	480.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4355	I	Restrictions on Vehicle Operation	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4355	M	Restrictions on Vehicle Operation	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4357	I	License Requirements to Operate Vehicle	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4357	M	License Requirements to Operate Vehicle	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4359 (b)	I	No Horses/Pack Animals Except in Designated Areas	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4359 (b)	M	No Horses/Pack Animals Except in Designated Areas	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4359 (c)	I	No Riding Horses/Pack Animals in Reckless Manner	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4359 (c)	M	No Riding Horses/Pack Animals in Reckless Manner	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4359 (e)	I	Gate Requirements When Riding	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4359 (e)	M	Gate Requirements When Riding	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4360	I	Regulations for Operation of Bicycles	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4360	M	Regulations for Operation of Bicycles	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4451 (a)	I	Camping in Designated Areas Only	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4451 (a)	M	Camping in Designated Areas Only	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4452	I	Limits on Number Occupying Camp Sites; per Extra	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4452	M	Limits on Number Occupying Camp Sites; per Extra	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4453	I	Camping Fees Due at Certain Times	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4453	M	Camping Fees Due at Certain Times	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4454	I	Occupancy Authorized Only After Fees Are Paid	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4454	M	Occupancy Authorized Only After Fees Are Paid	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4455	I	Camping Time Limits–Days per Year	35	40	28.00	20	20	7	8	158.00	40	35	233.00

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				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4455	M	Camping Time Limits–Days per Year	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4456	I	Vacating Campsite Requirements	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4456	M	Vacating Campsite Requirements	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4457	I	No Camping in Day-Use Areas Unless Authorized	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4457	M	No Camping in Day-Use Areas Unless Authorized	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4458	I	Nighttime Closure Requirements	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4458	M	Nighttime Closure Requirements	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4501 (a)	I	Hunting Requirements–Picacho State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (a)	M	Hunting Requirements–Picacho State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (b)	I	Hunting Requirements–Auburn State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (b)	M	Hunting Requirements–Auburn State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (c)	I	Hunting Requirements–San Luis Reservoir State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (c)	M	Hunting Requirements–San Luis Reservoir State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (d)	I	Hunting Requirements–Providence Mountain State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (d)	M	Hunting Requirements–Providence Mountain State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (e)	I	Hunting Requirements–Lake Oroville State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (e)	M	Hunting Requirements–Lake Oroville State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4501 (f)	I	Hunting Requirements–Lake Perris State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (f)	M	Hunting Requirements–Lake Perris State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (g)	I	Hunting Requirements–Harry A. Merlo State Recreation Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (g)	M	Hunting Requirements–Harry A. Merlo State Recreation Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4501 (h)	I	Hunting Requirements–Franks Tract State Recreational Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4501 (h)	M	Hunting Requirements–Franks Tract State Recreational Area	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4600 (a)	I	Restrictions–San Simeon Historical Monument–Tours	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4600 (a)	M	Restrictions–San Simeon Historical Monument–Tours	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4600 (b)	I	Restrictions–San Simeon Historical Monument–Objects + Damages	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4600 (b)	M	Restrictions–San Simeon Historical Monument–Objects + Damages	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4600 (c)	I	Restrictions–San Simeon Historical Monument–Food + Damages	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4600 (c)	M	Restrictions–San Simeon Historical Monument–Food + Damages	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4600 (d)	I	Restrictions–San Simeon Historical Monument–Cameras	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4600 (d)	M	Restrictions–San Simeon Historical Monument–Cameras	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4601 (a)	I	Restrictions–Torrey Pines, Point Lobos State Reserves, and Penasquitos Marsh Natural State Recreational Areas–Picnics	35	40	28.00	20	20	7	8	158.00	40	35	233.00

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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4601 (a)	M	Restrictions–Torrey Pines, Point Lobos State Reserves, and Penasquitos Marsh Natural State Recreational Areas–Picnics	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4601 (b)	I	Restrictions–Torrey Pines, Point Lobos State Reserves, and Penasquitos Marsh Natural State Recreational Areas–Designated Trails	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4601 (b)	M	Restrictions–Torrey Pines, Point Lobos State Reserves, and Penasquitos Marsh Natural State Recreational Areas–Designated Trails	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4603 (a)	I	Restrictions–Angel Island State Park–Boat Docking	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4603 (a)	M	Restrictions–Angel Island State Park–Boat Docking	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
4604	I	Restrictions–Carrizo Impact Area	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4604	M	Restrictions–Carrizo Impact Area	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4608	I	Restrictions–Mt. San Jacinto State Wilderness	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4608	M	Restrictions–Mt. San Jacinto State Wilderness	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4609 (b)	I	Restrictions–Pismo Dunes State Vehicular Recreational Area–Towing	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4609 (b)	M	Restrictions–Pismo Dunes State Vehicular Recreational Area–Towing	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4609 (b)(3)	I	Restrictions–Pismo Dunes–Off-Highway Vehicles	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4609 (b)(3)	M	Restrictions–Pismo Dunes–Off-Highway Vehicles	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4609 (b)(4)	I	Restrictions–Pismo Dunes–Safety Equipment	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4609 (b)(4)	M	Restrictions–Pismo Dunes–Safety Equipment	100	100	70.00	50	50	20	20	410.00	40	30	480.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4610 (a)	I	Unlicensed Driver Off-Highway Requirements	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4610 (a)	M	Unlicensed Driver Off-Highway Requirements	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4610 (b)	I	Unlicensed Driver Off-Highway Capabilities	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4610 (b)	M	Unlicensed Driver Off-Highway Capabilities	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (c)	I	Rockhounding–Commercial Restrictions	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (c)	M	Rockhounding–Commercial Restrictions	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (d)	I	Rockhounding–Maximum Take Allowed 15 Pounds per Day	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (d)	M	Rockhounding–Maximum Take Allowed 15 Pounds per Day	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (e)	I	Rockhounding–Use of Tools	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (e)	M	Rockhounding–Use of Tools	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (f)	I	Rockhounding–Prohibited in Swimming/Boating Areas	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (f)	M	Rockhounding–Prohibited in Swimming/Boating Areas	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (g)	I	Rockhounding–Areas for Collecting Limited	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (g)	M	Rockhounding–Areas for Collecting Limited	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (h)	I	Rockhounding–Indian Artifact Removal Prohibited	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (h)	M	Rockhounding–Indian Artifact Removal Prohibited	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4611 (i)	I	Rockhounding–Panning for Gold	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4611 (i)	M	Rockhounding–Panning for Gold	100	100	70.00	50	50	20	20	410.00	40	30	480.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4612	I	Restrictions–Crystal Cove Historic District	100	100	70.00	50	50	20	20	410.00	40	35	485.00
4612	M	Restrictions–Crystal Cove Historic District	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4613 (a)	I	Restrictions–CA State Railroad Museum–Capacities	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4613 (a)	M	Restrictions–CA State Railroad Museum–Capacities	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4613 (b)	I	Restrictions–CA State Railroad Museum–Photography	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4613 (b)	M	Restrictions–CA State Railroad Museum–Photography	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4613 (c)	I	Restrictions–CA State Railroad Museum–Artifacts + Damages	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4613 (c)	M	Restrictions–CA State Railroad Museum–Artifacts + Damages	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4613 (d)	I	Restrictions–CA State Railroad Museum–Climbing + Damages	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4613 (d)	M	Restrictions–CA State Railroad Museum–Climbing + Damages	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4613 (e)	I	Restrictions–CA State Railroad Museum–Food/Drink + Damages	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4613 (e)	M	Restrictions–CA State Railroad Museum–Food/Drink + Damages	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4650	I	No Swimming Except in Designated Areas	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4650	M	No Swimming Except in Designated Areas	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4651	I	No Boating/Water Skiing in Designated Swimming Areas	100	100	70.00	50	50	20	20	410.00	40	35	485.00

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

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Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4651	M	No Boating/Water Skiing in Designated Swimming Areas	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4656	I	No Diving Allowed	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4656	M	No Diving Allowed	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4657	I	No Boat Launching Where Posted	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4657	M	No Boat Launching Where Posted	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4658	I	No Exceeding Posted Speed Limits in Boats	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4658	M	No Exceeding Posted Speed Limits in Boats	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4659	I	Speed Restrictions for Nighttime Boat Operation	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4659	M	Speed Restrictions for Nighttime Boat Operation	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4660 (a)	I	Vessel Overnight Stay Prohibited Except Where Permitted	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4660 (a)	M	Vessel Overnight Stay Prohibited Except Where Permitted	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4660 (b)	I	Vessel Restrictions Apply if Posted	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4660 (b)	M	Vessel Restrictions Apply if Posted	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4660 (c)	I	Abandoned Vessels Must Be Removed by Registered Owner of Notification	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4660 (c)	M	Abandoned Vessels Must Be Removed by Registered Owner of Notification	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4661	I	Restrictions for Disposal of Waste From Boats	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4661	M	Restrictions for Disposal of Waste From Boats	100	100	70.00	50	50	20	20	410.00	40	30	480.00
4662 (a)	I	Vessel Inspection Requirements—Any Time	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4662 (a)	M	Vessel Inspection Requirements—Any Time	100	100	70.00	50	50	20	20	410.00	40	30	480.00



**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(California Code of Regulations, Title 14)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surchage* /10	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv. Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4662 (b)	I	Vessel Inspection Requirements– Continued Use	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4662 (b)	M	Vessel Inspection Requirements– Continued Use	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4664 (a)	I	Restrictions on Underwater Activities– Entry Areas	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4664 (a)	M	Restrictions on Underwater Activities– Entry Areas	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4700	I	Requirements for Runaway Snow Skis	35	40	28.00	20	20	7	8	158.00	40	35	233.00
4700	M	Requirements for Runaway Snow Skis	75	80	56.00	40	40	15	16	322.00	40	30	392.00
4701	I	Winter Sports Allowed Only in Designated Areas	50	50	35.00	25	25	10	10	205.00	40	35	280.00
4701	M	Winter Sports Allowed Only in Designated Areas	100	100	70.00	50	50	20	20	410.00	40	30	480.00

**Notes**

<sup>1</sup> Per PR 5008.7: fine of "not less than \$100 nor more than \$1,000" for violation of any rule or regulation adopted by the Department of Parks and Recreation prohibiting the leaving, depositing, dropping, or scattering of bottles, broken glass, ashes, wastepaper, cans, or other rubbish in a state park.

**PARKS AND RECREATION BAIL AND PENALTY SCHEDULE**  
 (\*See Preface, Section III) (\*\*See Preface, Section IV)  
 (California Code of Regulations, Title 14)

**SPEED CHART  
 (FOR ALL SPEED LIMITS)**

<b>MPH Over Limit</b>	<b>Base Fine</b>	<b>State PA*</b>	<b>County PA*/10</b>	<b>DNA PA*</b>	<b>Court Facility Const. PA*/10</b>	<b>Surcharge*</b>	<b>EMS PA* /10</b>	<b>Fine Surcharge &amp; PA Subtotal</b>	<b>Court OPS</b>	<b>Conv.Assess.</b>	<b>"Total Bail" **</b>
		<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	<b>35</b>	
1-15	\$35	\$40	\$28.00	\$20	\$20	\$7	\$8	\$158.00	\$40	\$35	\$233.00
16-25	\$70	\$70	\$49.00	\$35	\$35	\$14	\$14	\$287.00	\$40	\$35	\$362.00
26 and over	\$100	\$100	\$70.00	\$50	\$50	\$20	\$20	\$410.00	\$40	\$35	\$485.00

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Business and Professions Code)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
725	(a)	<sup>1</sup> M	Excessive Prescribing or Administering of Drugs or Treatment	100	100	70.00	50	50	20	20	410.00	40	30	480.00
2225.5	(c)	<sup>2</sup> M	Multiple Failures of Licensee or Health-Care Facility to Comply With Court Order to Enforce Subpoena Mandating Release of Records	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
2570.3		<sup>3</sup> M	License Required to Practice Occupational Therapy	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
2630		<sup>4</sup> I	License Required to Operate as a Physical Therapist	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
2630		<sup>5</sup> M	License Required to Operate as a Physical Therapist	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
2903		<sup>6</sup> I	License Required to Operate as a Psychologist	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
2903		<sup>7</sup> M	License Required to Operate as a Psychologist	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
3535	(a)	<sup>8</sup> M	Violation by Physician or Surgeon of Physician's Assistant Employment Requirements	300	300	210.00	150	150	60	60	1,230.00	40	30	1,300.00
3660	(a,b)	<sup>9</sup> I	License Required to Claim to Be or Practice as a Naturopathic Doctor	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
3660	(a,b)	<sup>10</sup> M	License Required to Claim to Be or Practice as a Naturopathic Doctor	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
3760		<sup>11</sup> I	Unauthorized Practice or Use of Title in Providing Respiratory Care	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
3760		<sup>12</sup> M	Unauthorized Practice or Use of Title in Providing Respiratory Care	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
3761		<sup>13</sup> I	License Required to Provide Respiratory Care	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
3761		<sup>14</sup> M	License Required to Provide Respiratory Care	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4825		<sup>15</sup> I	License Required to Practice Veterinary Medicine	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
4825		<sup>16</sup> M	License Required to Practice Veterinary Medicine	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
4980		<sup>17</sup> I	License Required to Practice as a Marriage, Family, and Child Counselor	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
4980		<sup>18</sup> M	License Required to Practice as a Marriage, Family, and Child Counselor	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
4996		<sup>19</sup> I	License Required to Practice as a Clinical Social Worker	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

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					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
4996		M	License Required to Practice as a Clinical Social Worker	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
5536	(a-c)	<sup>20</sup> I	License Required to Operate as an Architect	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
6451		<sup>21</sup> I	Unsupervised Performance of Services for Consumer by Paralegal	500	500	350.00	250	250	100	100	2,050.00	40	35	2,125.00
6452		<sup>22</sup> I	Unlawful Advertisement by Paralegal	500	500	350.00	250	250	100	100	2,050.00	40	35	2,125.00
6704	(a)	I	License Required to Operate as an Engineer	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
6704	(a)	<sup>23</sup> M	License Required to Operate as an Engineer	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
6980.10		<sup>24</sup> I	License Required to Operate as a Locksmith	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
6980.10		<sup>25</sup> M	License Required to Operate as a Locksmith	10,000	10,000	7,000.00	5,000	5,000	2,000	2,000	41,000.00	40	30	41,070.00
7028	(a)	<sup>26</sup> M	License Required to Operate as a Contractor	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
7028.16		<sup>27</sup> M	Contractor License Required to Repair Damage From Natural Disaster	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
7317		<sup>28</sup> I	License Required to Operate as a Barber or Cosmetologist or to Perform Electrolysis	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7317		<sup>29</sup> M	License Required to Operate as a Barber or Cosmetologist or to Perform Electrolysis	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
7502		<sup>30</sup> I	License Required to Operate a Repossession Agency	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7502		<sup>31</sup> M	License Required to Operate a Repossession Agency	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
7592		<sup>32</sup> I	License Required to Provide Service as an Alarm Company Operator	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7592		<sup>33</sup> M	License Required to Provide Service as an Alarm Company Operator	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
7617		<sup>34</sup> I	License Required to Operate as a Funeral Director	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7617		<sup>35</sup> M	License Required to Operate as a Funeral Director	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

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					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
7637.1	36	M	License Required to Operate as a Cemetery Broker or Salesperson	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
7641	37	I	License Required to Operate as an Embalmer	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7641	38	M	License Required to Operate as an Embalmer	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
7673.1	39	M	Storage of Cremated Remains in a Reckless Manner	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
7713.2	40	M	License Required to Engage in Activities of a Crematory Manager for a Licensed Crematory	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
7872	(a)	41	I License Required to Operate as a Geologist	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
7872	(a)	42	M License Required to Operate as a Geologist	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
8016		43	I License Required to Operate as a Shorthand Reporter	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
8016		44	M License Required to Operate as a Shorthand Reporter	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
8550		45	M License Required to Practice Structural Pest Control	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
8725		46	I License Required to Operate as a Land Surveyor	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
8725		47	M License Required to Operate as a Land Surveyor	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
9840		48	I License Required to Operate as an Electronic or Appliance Repair Dealer	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
9840		49	M License Required to Operate as an Electronic or Appliance Repair Dealer	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
9884.6		50	M License Required to Operate as an Automotive Repair Dealer	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
10085.5	(a)	51	M Advance Fee for Loan Secured Before Borrower Becomes Obligated to Complete Loan	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
10085.6	(a)	52	M Advance Fee to Provide Services for Loan Modification or Forbearance	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
10147.6	(a)	53	M Offering Services for Loan Modification or Forbearance Services Without Making Required Written Disclosure	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Business and Professions Code)

Section	Notes	Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS	Conv.Assess.	"Total Bail" **
					<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>		
17550.19	(a)	<sup>54</sup> M	Violation of Provision Regulating Sellers of Travel	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
19049		<sup>55</sup> I	License Required to Operate as a Furniture, Bedding, and Thermal Insulation Manufacturer, Wholesaler, Distributor, Retailer, or Rehabilitator	250	250	175.00	125	125	50	50	1,025.00	40	35	1,100.00
19049		<sup>56</sup> M	License Required to Operate as a Furniture, Bedding, and Thermal Insulation Manufacturer, Wholesaler, Distributor, Retailer, or Rehabilitator	500	500	350.00	250	250	100	100	2,050.00	40	30	2,120.00
21804		<sup>57</sup> M	Failure to Permanently Mark Optical Disc (Identification	5,000	5,000	3,500.00	2,500	2,500	1,000	1,000	20,500.00	40	30	20,570.00
21805		M	Purchase or Sale of Optical Disc With Identification Mark Removed or False Mark	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
21806		M	Destroying Optical Disc Identification Mark	3,000	3,000	2,100.00	1,500	1,500	600	600	12,300.00	40	30	12,370.00
22972	(a,b)	<sup>58</sup> M	License Required for Retailer to Sell Cigarettes or Tobacco Products	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
22975	(a)	<sup>59</sup> M	License Required for Wholesaler or Distributor to Engage in Sale of Cigarettes or Tobacco Products	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
22979.21		<sup>60</sup> M	License Required for Manufacturer or Importer of Tobacco Products to Engage in Sale of Tobacco Products	1,500	1,500	1,050.00	750	750	300	300	6,150.00	40	30	6,220.00
23300		<sup>61</sup> M	Sale of Alcoholic Beverage Without a License	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
25612.5	(c)(9)	<sup>62</sup> I	Failure of Licensed Retailer to Create and Label "Adults Only" Area for Sale or Rental of Video Recordings of Harmful	100	100	70.00	50	50	20	20	410.00	40	30	480.00
<u>25623</u>	<u>(b)</u>	<sup>63</sup> I	<u>Sale of Powdered Alcohol</u>	<u>35</u>	<u>40</u>	<u>28.00</u>	<u>20</u>	<u>20</u>	<u>7</u>	<u>8</u>	<u>158.00</u>	<u>40</u>	<u>30</u>	<u>228.00</u>
<u>25623.5</u>	<u>(b)</u>	<sup>64</sup> I	<u>Possession of Powdered Alcohol</u>	<u>125</u>	<u>130</u>	<u>91.00</u>	<u>65</u>	<u>65</u>	<u>25</u>	<u>26</u>	<u>527.00</u>	<u>40</u>	<u>30</u>	<u>597.00</u>
25658	(a)	<sup>65</sup> M	Furnishing an Alcoholic Beverage to a Minor	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
25658	(b)	<sup>66</sup> M	Purchase of Alcohol, or Consumption of Alcohol, in On-sale Premises by Someone Under 21	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
25658	(c)	<sup>67</sup> M	Furnishing an Alcoholic Beverage to a Minor (Great Bodily Injury or Death)	1,000	1,000	700.00	500	500	200	200	4,100.00	40	30	4,170.00
25658	(d)	<sup>68</sup> M	On-sale Licensee Knowingly Permits a Person Under the Age of 21 to Consume Alcohol in the On-sale Premises	250	250	175.00	125	125	50	50	1,025.00	40	30	1,095.00
25662	(a)	M	Possession of Alcoholic Beverage by Person under the Age of 21 in a Public Place	250	250	175	125	125	50	50	1,025	40	30	1,095

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Business and Professions Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	

**Notes:**

- <sup>1</sup> Per B&P 733: "fine of not less than \$100 nor more than \$600 ... ."
- <sup>2</sup> Multiple acts by a licensee ... shall be punishable by a fine not to exceed \$5,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and
- <sup>3</sup> Per B&P 2570.23: "fine of not more than \$5,000 ... ."
- <sup>4</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.
- <sup>5</sup> Per B&P 2670, a misdemeanor violation is punishable by a fine not exceeding \$1,000 or imprisonment in a county jail not exceeding 6 months, or by both.
- <sup>6</sup> Per B&P 2970, a misdemeanor violation is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$2,000, or by both.
- <sup>7</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.
- <sup>8</sup> Per B&P 3535(b): "fine not to exceed \$1,000 ... ."
- <sup>9</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.
- <sup>10</sup> Per B&P 3664: " ... fine of not more than \$5,000 ... ."
- <sup>11</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.
- <sup>12</sup> Per B&P 3763, a misdemeanor violation is punishable by a fine not exceeding \$1,000 or imprisonment in a county jail not exceeding 6 months, or by both.
- <sup>13</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.
- <sup>14</sup> Per B&P 3763, a misdemeanor violation is punishable by a fine not exceeding \$1,000 or imprisonment in a county jail not exceeding 6 months, or by both.
- <sup>15</sup> Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be
- <sup>16</sup> Per B&P 4831, a misdemeanor violation is punishable by a fine not less than \$500, nor more than \$2,000, or imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment.

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

(Business and Professions Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS Conv. Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	
17		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
18		Per B&P 4983, a misdemeanor violation is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$2,500, or by both.										
19		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
20		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
21		Per B&P 6455: "fine of up to \$2,500 as to each consumer with respect to whom a violation occurs."										
22		Per B&P 6455: "fine of up to \$2,500 as to each consumer with respect to whom a violation occurs."										
23		Per B&P 146(e), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be										
24		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be										
25		A misdemeanor violation per B&P 6980.13 is punishable by a fine of \$10,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.										
26		Per B&P 7028: Fine " ... not exceeding \$5,000 ... "										
27		Per B&P 7028.16: Fine "... up to \$10,000, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or for two or three years, or by both that fine and imprisonment, or by a fine up to \$1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment."										
28		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
29		A misdemeanor violation per B&P 7317 is punishable under PC 19 by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding.										
30		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
31		Per B&P 7502.1, a misdemeanor violation is punishable by a fine of \$5,000, or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.										



**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

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(Business and Professions Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA*/10	Surcharge*	EMS PA*/10	Fine Surcharge & PA Subtotal	Court OPS Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	
32		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
33		Per B&P 7592.2, a misdemeanor violation is punishable by a fine of \$1,000, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.										
34		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
35		A misdemeanor violation per B&P 7715 is punishable under PC 19 by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both.										
36		Assem. Bill 180 (Stats. 2015, ch. 395). Per B&P 7637.6: ". . . punished by a fine not to exceed \$5,000."										
37		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
38		A misdemeanor violation per B&P 7715 is punishable under PC 19 by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both.										
39		Assem. Bill 180 (Stats. 2015, ch. 395). Per B&P 7673.1: ". . . punishable by imprisonment in a county jail not exceeding one year or by a fine not to exceed \$5,000, or by both that fine and imprisonment."										
40		Assem. Bill 180 (Stats. 2015, ch. 395). Per B&P 7713.3: ". . . a misdemeanor . . . to cremate human remains . . . without a valid, unexpired crematory license."										
41		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
42		Per B&P 7872, a misdemeanor violation is punishable by a fine of not more than \$1,000, or by imprisonment not to exceed 3 months, or by both fine and imprisonment.										
43		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
44		A misdemeanor violation per B&P 8019 is punishable under PC 19 by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both.										

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

(\*See Preface, Section III) (\*\*See Preface, Section IV)

**(Business and Professions Code)**

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	
45		Per B&P 8553, a misdemeanor violation is punishable by a fine of not less than \$100, nor more than \$1,000, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.										
46		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
47		A misdemeanor violation per B&P 8792 is punishable under PC 19 by imprisonment in the county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both.										
48		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
49		Per B&P 9850, a misdemeanor violation is punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding six months, or by both such fine and imprisonment.										
50		Assem. Bill 1560 (Stats. 2001, ch. 357) amended B&P 145 and B&P 145.5 to delete B&P 9884.6 from the list of offenses that are infractions.										
51		Per B&P 10085.5(c): "punishable by a fine not exceeding \$10,000, by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not to exceed \$50,000."										
52		Per B&P 10085.6(b): Fine " ... not exceeding \$10,000 ... or if by a corporation, the violation is punishable by a fine not exceeding \$50,000."										
53		Per B&P 10147.6 (c): Fine " ... not exceeding \$10,000 ... "										
54		Violation punishable "by a fine of not more than \$10,000, by imprisonment in a county jail for not more than one year, or by both ... "										
55		Per B&P 146(d), a violation charged as an infraction under B&P 146(c) is subject to a fine of not less than \$250 and not more than \$1,000. No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.										
56		Per B&P 19220, a misdemeanor violation is punishable by a fine of not less than \$500 nor more than \$1,500 or by imprisonment for not less than three nor more than six months or by both such fine and imprisonment.										
57		Per B&P 21804: " ... fine of not less than \$500 and not more than \$25,000 for a first offense."										
58		Per B&P 22981: " ... fine not to exceed \$5,000 ... "										
59		Per B&P 22981: " ... fine not to exceed \$5,000 ... "										
60		Per B&P 22981: " ... fine not to exceed \$5,000 ... "										
61		Per B&P 25617: "... fine of not more than \$1,000..."										
62		Per B&P 25612.5(c)(9), failure to create and label the "adults only" area is an infraction punishable by a fine of not more than \$100.										
63		<u>Senate Bill 819 (Stats. 2016, ch.778). B&amp;P 25623 sets the level of crime as an infraction and limits the base fine to \$500."</u>										

**BUSINESS LICENSING BAIL AND PENALTY SCHEDULE**

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(Business and Professions Code)

Section	Notes Level	Offense	Base Fine	State PA*	County PA*/10	DNA PA*	Court PA* /10	Surcharge*	EMS PA* /10	Fine Surcharge & PA Subtotal	Court OPS Conv.Assess.	"Total Bail" **
				<b>10/10</b>	<b>7.00</b>	<b>5/10</b>	<b>5.00</b>	<b>20%</b>	<b>2.00</b>		<b>40</b>	

<sup>64</sup> Assem. Bill 2799 (Stats. 2016, ch.742). B&P 25623.5 sets the level of crime as an infraction and the base fee at \$125.

<sup>65</sup> Per B&P 25658(e)(2): "fine of \$1,000, no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not attending school."

<sup>66</sup> Per B&P 25658(e)(1): "fine of \$250, no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court."

<sup>67</sup> Per B&P 25658(e)(3): "punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of \$1,000, or by both imprisonment and

<sup>68</sup> Per B&P 25658(e)(1): "fine of \$250, no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 36 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court."

County Reference Worksheet

	<b>Court Facility Construction PA GC 70372 (amended to \$5 for all counties)</b>	<b>County PA GC 76000(a) GC 76000(e)</b>	<b>EMS PA GC 76000.5</b>	<b>Night Court VC 42006</b>	<b>CAP FEE VC 11205.2</b>
<b>If County Amounts Are Different From The Amount Listed in This Row, Insert the Applicable Amount to Recalculate All Tables:</b>	<b>5.00</b>	<b>7.00</b>	<b>2.00</b>	<b>1.00</b>	<b>0.00</b>

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal (include amend/revise/adopt/approve + form/rule numbers):**

Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability-to-Pay Determinations

Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; repeal Cal. Stds. Jud. Admin., standard 4.41

**Committee or other entity submitting the proposal:**

Traffic Law Advisory Committee (TAC)  
Criminal Law Advisory Committee (CLAC)

**Staff contact (name, phone and e-mail):**

Jamie Schechter  
415-865-5327  
jamie.schechter@jud.ca.gov

Tara Lundstrom

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tara.lundstrom@jud.ca.gov

**Identify project(s) on the committee's annual agenda that is the basis for this item:**

Approved by RUPRO: 12/10/2015

Project description from annual agenda:

TAC annual agenda:

Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.

CLAC annual agenda:

Bail in Non-Traffic Infraction Cases: Consider recommendations, consistent with rule 4.105, to provide for appearances at arraignment and trial without the deposit of bail in non-traffic infraction cases; Consider rule, form, or other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to post-conviction proceedings or after the defendant has previously failed to appear or pay.

**If requesting July 1 or out of cycle, explain:**

This proposal circulated this spring from March 21 to May 6, 2016. The committees recommended recirculating the proposal on an expedited cycle from August 3 to August 26, 2016, in light of the public comments received, communications from various advocacy groups and other entities to the Judicial Council expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees, and other related developments. The expedited cycle allowed the committees to present this proposal to the Judicial Council during its December meeting.

The committees have recommended that the rules go into effect on January 1, 2017, and that courts be required to implement as soon as reasonably possible, but no later than May 1, 2017.

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

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Title	Agenda Item Type
Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability-to-Pay Determinations	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; repeal Cal. Stds. Jud. Admin., standard 4.41	January 1, 2017, with implementation as soon as reasonably possible, but no later than May 1, 2017
Recommended by	Date of Report
Traffic Advisory Committee Hon. Gail Dekreon, Chair	November 10, 2016
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Contact
	Jamie Schechter, Attorney 415-865-5327 <a href="mailto:Jamie.Schechter@jud.ca.gov">Jamie.Schechter@jud.ca.gov</a>
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### Executive Summary

The Traffic Advisory Committee and Criminal Law Advisory Committee recommend amending one rule and adopting three new rules of the California Rules of Court to standardize and improve court procedures and improve notice to defendants regarding procedures in infraction cases, including specifically failures to appear and failures to pay bail and court-imposed fines, fees, and assessments for infraction offenses and ability-to-pay determinations. These rules are designed to promote procedural fairness in infraction cases, enhance guidance for defendants and courts, improve notice to defendants, and clarify procedures regarding ability-to-pay

determinations, while also minimizing the need for court appearances by providing for written petitions where possible.

## **Recommendation**

The Criminal Law Advisory Committee and the Traffic Advisory Committee recommend that the Judicial Council, effective January 1, 2017:

1. Amend rule 4.105 of the California Rules of Court to require that trial court websites include a link to the statewide traffic self-help information posted on the California courts website;
2. Adopt rule 4.106 of the California Rules of Court to establish uniform procedures in infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay;
3. Adopt rule 4.107 of the California Rules of Court to require that trial courts send reminder notices to traffic defendants before their initial appearance and specify what information must be provided in those notices;
4. Adopt rule 4.335 of the California Rules of Court to standardize and improve court procedures and notice to infraction defendants related to ability-to-pay determinations.
5. Repeal standard 4.41 of the California Standards of Judicial Administration, which currently provides recommendations regarding courtesy notices.

Courts must implement these provisions as soon as reasonably possible but no later than May 1, 2017. The text of the new and amended rules are attached at pages 23–31.

## **Previous Council Action**

The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns that courts were requiring defendants to post bail before challenging traffic infractions. In adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay fines or fees.

## **Rationale for Recommendation**

The advisory committees developed this proposal in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases. The proposed rules are designed to promote procedural fairness for infraction cases, enhance guidance for defendants and courts, improve notice to defendants, and clarify procedures regarding ability-to-

pay determinations, while also minimizing the need for court appearances by providing for written petitions where possible.

This proposal also addresses criticisms aimed at state infraction laws that have raised concerns about procedural fairness in infraction proceedings, particularly regarding the fees and fines imposed and the court procedures applied after defendants fail to appear or pay. The Judicial Council has received communications from various advocacy groups and other entities expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees and the lack of uniformity regarding information about ability-to-pay determinations, among other concerns.

#### **Amended rule 4.105**

Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to secure a court appearance at either arraignment or trial unless a specified exception applies. Under the rule, courts may require infraction defendants to deposit bail before a first appearance only in the following circumstances: (1) the defendant elects a statutory procedure (such as trial by written declaration) that requires the deposit of bail, (2) the defendant at arraignment refuses to sign a written promise to appear for future court proceedings, or (3) the court determines that the particular defendant is unlikely to appear as ordered without a deposit of bail and states its reasons for that finding.

To promote procedural fairness for infraction cases, the committees recommend adding subdivision (e) to rule 4.105. The amended rule would require that local trial court websites include a link to the statewide traffic self-help information posted on the California Courts website at: [www.courts.ca.gov/selfhelp-traffic.htm](http://www.courts.ca.gov/selfhelp-traffic.htm). In addition to information on appearances in court for arraignment and trial, the self-help information includes guidance on other subjects such as traffic violator school, payment plans, community service, correctable violations, trial by written declaration, consequences for failure to appear or pay, and information about requesting ability-to-pay determinations.

#### **Proposed rule 4.106**

As part of their continued examination of court procedures for infraction cases and efforts to improve access to justice in infraction cases as directed by the council, the committees recommend new rule 4.106 to standardize and improve the imposition of bail, fines, fees and assessments when a defendant has failed to appear or pay in infraction cases.

The proposed rule would provide the following:

- When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating or reducing the assessment.



- A defendant may, within the time specified in the notice, move by written petition to reduce or vacate the assessment.
- When a court imposes a civil assessment for failure to appear or pay, the defendant may petition—without paying any bail, fines, penalties, fees, or assessments—that the court vacate the civil assessment because the defendant had good cause for failing to appear or pay.
- If a defendant establishes good cause for the failure to appear or pay, the court must vacate the civil assessment. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.
- When a case has not been adjudicated and a court refers it to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, unless the court expressly makes findings that bail is appropriate.
- When a defendant fails to pay under an installment plan, the defendant may request modification of the payment terms.
- When a court has entered a judgment in a trial by written declaration held in absentia, the defendant may request a trial de novo, and the court may require the defendant to deposit bail.
- When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be heard on ability to pay before notifying the Department of Motor Vehicles (DMV). This notice may be provided on the reminder notice that would be required by proposed rule 4.107, the civil assessment notice, or any other notice provided to the defendant.

Additionally, an advisory committee comment for proposed rule 4.106 provides guidance for implementing the rule by listing examples of circumstances that may establish good cause for failure to appear or pay when a defendant requests that a court vacate a civil assessment. These examples include the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

The advisory committee comment also clarifies that a court may exercise its discretion to deny a request to modify the payment terms and lists some options available to the court if it grants the request. In addition, it clarifies that a court is not required to provide a hearing before notifying the DMV that the defendant has failed to pay, unless requested by the defendant or directed by the court.

### **Proposed rule 4.107 and standard of judicial administration 4.41**

Courts currently may send courtesy notices to defendants who receive traffic tickets to provide them with information about how to resolve the citation. The Judicial Council's recommendations for courtesy notices are set forth in standard 4.41 of the California Standards of Judicial Administration. Although standard 4.41 does not require courts to send courtesy notices, most courts currently send such notices.

This proposal would repeal standard 4.41, move its content into a rule of court, and require that all courts send these notices. To reflect that these notices are no longer optional, the committees recommend that they be renamed as "reminder notices." Proposed rule 4.107 offers the court several options for sending reminder notices to defendants depending on the court's current technological capabilities. Courts may send them in paper or electronic form, including by e-mail or text message. By providing a phone number or e-mail address to the court or to a law enforcement officer at the time of signing the notice to appear, a defendant consents to receiving the reminder notice electronically at that number or address. The proposed rule clarifies that failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the *Notice to Appear*.

Under proposed rule 4.107, reminder notices must contain the following information:

- The appearance date and location, whether an appearance is mandatory or optional, the total bail amount and payment options, the statutory notice required under Vehicle Code section 42007 regarding traffic school, notice that a traffic violator school will charge a fee, information regarding trial by declaration and other specific procedures if they are available in the court, correction requirements and procedures for correctable violations, and the court's contact information;
- Warnings about the potential consequences for failure to appear and failure to pay;
- The right to request an ability-to-pay determination; and
- Notice regarding the availability of community service and installment payment plans, if those options are available in a particular court.

Additionally, an advisory committee comment provides further guidance for courts by describing various means for implementing electronic reminder notices and recommends that courts provide website addresses or links to local forms and relevant information on reminder notices, if possible.

### **Proposed rule 4.335**

Vehicle Code section 42003, which governs the payment of fines and costs for Vehicle Code violations, provides that a court must consider a defendant's ability to pay upon the defendant's request. The legislative history of this section demonstrates that the Legislature intended for

section 42003 to apply to fines for Vehicle Code infractions.<sup>1</sup> The committees modeled proposed rule 4.335 on the ability-to-pay provisions in Vehicle Code section 42003 and clarified this procedure. Proposed rule 4.335 would standardize and improve procedures for ability-to-pay determinations for all infraction cases.<sup>2</sup> This rule would provide the following:

- Courts must provide defendants notice of their right to request an ability-to-pay determination and make instructions available on how to request that determination;
- A defendant may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections;
- The court must permit the defendant to make the request by written petition, unless the court directs an appearance. The request must include any information or documentation the defendant wishes the court to consider;
- Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service if available in that court, suspend the fine in whole or in part, or offer an alternative disposition;
- The defendant may request an ability-to-pay determination at any time during the pendency of the judgment; and
- If a defendant has already had an ability-to-pay determination in the case, a defendant may request a subsequent ability-to-pay determination only based on changed circumstances.

An advisory committee comment to the proposed rule clarifies that courts may provide notice of the right to request an ability-to-pay determination on the reminder notice required by rule 4.107, the notice of any civil assessment under Penal Code section 1214.1, a court's website, or any other notice provided to the defendant. The advisory committee comment also clarifies that the

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<sup>1</sup> See Assem. Comm. on Ways and Means, Analysis, Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993 (“This bill would provide that in specified misdemeanor cases, the fine shall be double the amount otherwise prescribed; and, in the case of an infraction, the fine shall be one category [sic] higher than the penalty otherwise prescribed by the uniform traffic penalty schedule. This bill would also require that the court, upon the request of the defendant, make a determination of the defendant’s ability to pay all or a portion of the increased fine for this offense and all other Vehicle Code violations.”); Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993 (“Existing law provides that a person convicted of an infraction, pursuant to the Vehicle Code, be punished by a fine in accordance with an established fine schedule. This bill, in addition, would require the court, upon the request of the defendant, to make a determination of the defendant’s ability to pay all or a portion of the reasonable costs of probation, fines, and restitution, and of conducting the pre-sentencing report, as specified. The bill would provide procedures for making that determination, would require the court to set the amount to be reimbursed, and would require the court to order the defendant to pay that amount, if the court determined that the defendant had the ability to pay. The purpose of this bill is to increase the penalties for driving offenses committed within a highway construction or maintenance area.”).

<sup>2</sup> Consistent with the Judicial Council’s rule-making authority under article VI, section 6 of the California Constitution, which authorizes the council to enact rules not inconsistent with statute, this rules proposal would extend section 42003’s ability-to-pay provisions to nontraffic infraction offenses.

court should take into account factors including whether the defendant is receiving public benefits or has a monthly income of 125 percent or less of the current poverty guidelines in determining the ability to pay.

In addition, the advisory committee comment explains that the amount and manner of paying the total fine must be reasonable and compatible with a defendant's financial ability and that the court may still exercise discretion even if the defendant has not demonstrated an inability to pay. The comment also clarifies that regardless of whether the defendant has demonstrated an inability to pay, the court may consider the defendant's criminal history and the severity of the offense among other factors. The committees may develop optional forms to assist courts in making ability-to-pay determinations in recommending future proposals.

### **Comments, Alternatives Considered, and Policy Implications**

The committees received extensive and thoughtful feedback in response to this proposal and have incorporated suggested revisions when feasible.

This proposal circulated twice for public comment. It first circulated from March to April in 2016. In light of the comments received during the first circulation and continued developments on these issues, the committees revised the proposal and recommended its recirculation on an expedited basis from August 3 to August 26 to allow it to go into effect on January 1, 2017. All commenters who submitted comments during the first circulation were instructed to resubmit comments during the second circulation if their concerns had not been addressed in the revised proposal.

Twenty comments were submitted in response to the second invitation to comment; one agreed with the proposal, four agreed with the proposal if modified, two disagreed with the proposal, and 13 did not indicate their position. The committees revised proposed rules 4.106, 4.107, and 4.335 in response to the comments. Their specific responses to each comment are available in the attached comment chart at pages 32–171.

#### **Comments on rule 4.105**

The committees have recommended only limited amendments to rule 4.105. Apart from a minor technical edit to rule 4.105(c)(3), this proposal would add subdivision (e) to provide that the website for each trial court must include a link to traffic self-help information posted on the Judicial Council website.

One commenter asked that the committees revise rule 4.105 to clarify that defendants should not be required to post bail to receive a trial by written declaration or to set arraignment. The commenter further requested that the rule clarify that a failure to appear may not in and of itself be grounds for requiring payment of bail. The committees declined to pursue these recommendations because they are outside of the scope of the current proposal and may require legislative changes.

Another commenter noted that courts should provide more information online about local court processes and requirements. While this recommendation is outside of the scope of the current proposal, the committees may consider providing more standards for local websites in future proposals.

#### **Comments on proposed rule 4.106(a)**

Subdivision (a) of proposed rule 4.106 provides that this rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay. As circulated, the proposed advisory committee comment to subdivision (a) would have further provided that rule 4.106 was intended to apply only to an infraction offense for which the defendant (1) had received a written notice to appear citation *and been released for a signed promise to appear*, and (2) had failed to appear by the appearance date or an approved extension of that date or had failed to pay as required. Three commenters expressed concern about the reference in the circulated advisory committee comment to a defendant's having "been released for a signed promise to appear." Two suggested that this language inadvertently eliminated red light camera enforcement citations from the rule's scope. The committees agreed and removed this language from the advisory committee comment in response to these comments.

#### **Comments on proposed rule 4.106(c)**

Proposed rule 4.106(c) provides procedures for implementing Penal Code section 1214.1(b)'s requirement that courts must vacate a civil assessment if a defendant establishes good cause for a failure to appear or pay.

***Guidelines and criteria for the initial imposition of the civil assessment.*** One commenter requested that the committees expand proposed rule 4.106(c) to clarify that the initial imposition of the civil assessment is not mandatory. The commenter also encouraged the committees to recommend criteria and guidelines for the courts to use in determining whether to impose a civil assessment and the amount of the assessment. The committees declined to expand the rule as requested because procedures governing the initial imposition of the civil assessment are outside of the scope of the current proposal, but they may consider these suggestions in developing future proposals.

***Reducing the civil assessment in the exercise of discretion.*** Two commenters requested that proposed rule 4.106(c) recognize that a judicial officer may reduce the civil assessment, as judicial officers often reduce assessments instead of vacating them. These comments suggested possible confusion about when a civil assessment must be vacated and when it may be reduced. Penal Code section 1214.1 is clear that if good cause is shown, a judicial officer is required to vacate the entire amount of the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in the exercise of discretion. (*Id.*, § 1214.1(a).)

As circulated, proposed rule 4.106(c) intended to highlight this distinction. The circulated rule focused primarily on vacating civil assessments for good cause by providing (1) that the notice

of civil assessment must inform defendants of their right to petition that the civil assessment be vacated for good cause; (2) that the notice must include information about the process for vacating the assessment; (3) that a defendant may move by written petition to vacate the notice of civil assessment by showing good cause; (4) that the court must permit a defendant to present a showing of good cause without requiring payment of bail, fines, fees, or assessments; (5) that a petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment; and (6) that a court must vacate a civil assessment upon a showing of good cause for failure to pay or appear. To the extent that the circulated rule addressed a court's discretionary authority to reduce a civil assessment it did so only in subdivision (c)(6), which recognized that a court may still exercise its discretion absent a showing of good cause to reconsider whether a civil assessment should be imposed and, if so, the amount of the assessment.

The committees partly incorporated into the proposal the commenters' request that rule 4.106(c) provide greater recognition of a court's discretionary authority to reduce civil assessments. They revised subdivision (c)(1) to require that the notice of civil assessment include information about the process for reducing the assessment. The committees also revised subdivisions (c)(2) and (c)(3) to provide that a defendant may move by written petition to reduce the civil assessment and to recognize that a defendant may request reduction of the civil assessment without paying any bail, fines, penalties, fees, or assessments. However, they declined to require in subdivision (c)(1) that courts notify defendants on the civil assessment notice of their right to request that the civil assessment be reduced out of concern that this additional notice might contribute to confusion.

***Deadline for petitioning to vacate or reduce the civil assessment.*** As circulated, proposed rule 4.106(c)(2) provided that a defendant could petition to vacate the civil assessment only within 20 days after the court sends the notice of civil assessment. One commenter requested that the committees remove this 20-day time limit and instead allow a defendant to establish good cause at any point, including after the assessment is levied. Another echoed the recommendation to amend the rule to allow a defendant to petition to vacate the assessment for good cause at any time.

The committees elected to remove the 20-day time limit from subdivision (c)(2). Penal Code section 1214.1(b)(1) provides that the court must vacate a civil assessment if the defendant appears within the time specified in the notice of civil assessment. Individual courts may specify times longer than 20 days in the notice of civil assessment, and the committees do not intend to limit a court's discretion. Yet, allowing a defendant to come back at any time to vacate the civil assessment, as the commenters recommend, might conflict with statute and require a legislative change. Accordingly, the committees declined to accept this suggestion and instead revised the language in subdivision (c)(2) to track the statute. As noted above, the committees also expanded this subdivision to encompass petitions to reduce the civil assessment in the exercise of discretion.

***Request by a defendant for a court appearance.*** As circulated, proposed rule 4.106(c)(2) allowed a defendant to request a court appearance to adjudicate a petition for vacating the civil assessment for good cause. A commenter recommended removing this provision. The committees agreed and removed the language from the proposal because written petitions, when feasible, should be encouraged for the convenience of both defendants and the courts.

***Effect of filing a petition to vacate an assessment.*** Proposed rule 4.106(c)(4) provides that a petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

This subdivision generated conflicting comments. On the one hand, a commenter recommended deleting subdivision (c)(4) on the view that the filing of a petition to vacate the civil assessment should stay the payment order. This commenter also suggested revising the rule to require that any order suspending a driver's license be recalled upon the filing of a petition to vacate the civil assessment. On the other hand, three commenters supported this subdivision as drafted. The committees declined to remove this subdivision because allowing for proceedings to be stayed could be unduly burdensome for courts.

***Examples of good cause for vacating a civil assessment.*** The advisory committee comment to proposed rule 4.106(c) lists examples of circumstances that may amount to good cause for failure to pay or appear. These examples include the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment.

Two commenters requested expanding this list. One recommended adding inability to pay, homelessness, and unforeseeable circumstances; the other, lack of child care and an inflexible work schedule. The committees declined to provide additional examples of good cause in the advisory committee comment. The advisory committee comment is not intended to be an exhaustive list. A judicial officer retains discretion to determine that other circumstances amount to good cause in reviewing the individual circumstances presented in the case on review.

#### **Comments on proposed rule 4.106(d)**

Proposed rule 4.106(d) addresses adjudication of the underlying charges after a court has referred an unadjudicated case to a comprehensive collection program.

***Application only in unadjudicated cases.*** As circulated, proposed rule 4.106(d)(1) stated that it applied "in unadjudicated cases." The circulated proposal also included an advisory committee comment clarifying that subdivision (d) was "not intended to allow defendants to seek readjudication of the underlying charges if the case has already been adjudicated."

Nevertheless, three commenters requested further clarification that the scope of subdivision (d) is limited only to unadjudicated cases. The committees revised the heading of subdivision (d) and the language of subdivision (d)(1) in an effort to eliminate any confusion as to its intended scope. They also deleted the advisory committee comment because they viewed it as redundant to the revised rule.

***Use of alternative scheduling methods.*** As circulated, proposed rule 4.106(d)(2) provided that a defendant may request an appearance date to adjudicate the charges by written petition. A commenter suggested also allowing courts to use alternative methods other than written petition to request appearance dates. The committees agreed and have revised subdivision (d)(2) as requested to provide courts with greater flexibility.

***Clarification of the “unlikely to appear” standard.*** Proposed rule 4.106(d)(3) provides that a court may require a deposit of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

Three commenters requested that the committees provide guidance on the “unlikely to appear” standard. One suggested that the rule state that a failure to appear is not in itself grounds to presume an unlikelihood of appearing. The second supported subdivision (d)(3) but expressed concern that the “unlikely to appear” standard was unclear. The third recommended including factors that a court may consider in assessing the likelihood of appearing, such as a previous failure to appear in the same case. The committees declined to identify factors relevant to determining whether a defendant is unlikely to appear as ordered without a deposit of bail because this determination falls within judicial discretion.

#### **Comments on proposed rule 4.106(e)**

Proposed rule 4.106(e) governs the situation where a defendant fails to pay or make a payment under an installment plan. It includes procedures for adjudicating petitions filed by defendants to modify the payment terms.

***Petition to modify the payment terms.*** As circulated, proposed rule 4.106(e) referenced requests to modify and vacate the judgment. Five commenters expressed concern with allowing a defendant to modify the judgment. Another requested that the committees remove the term “vacate,” and another suggested replacing the term “request” with “petition” throughout the proposal. The committees agreed and revised subdivision (e) to clarify that a defendant may petition to modify the payment terms. They removed the reference to vacating the judgment and replaced the term “request” with “petition” throughout the proposal.

***Additional good cause requirement if case has been sent to collections.*** One commenter requested that proposed rule 4.106(e) provide that a defendant be required to show good cause to schedule a hearing to modify the payment terms if case was in collections. The committees declined to add this limitation; proposed rule 4.106(e) is intended to allow a defendant to petition



the court to modify the payment terms at any time, including after a case has been sent to collections.

***Options available to a court in adjudicating a petition to modify payment terms.*** One commenter expressed concern that proposed rule 4.106(e) created an expectation that a court would necessarily reduce the fine any time that a defendant made a request. A second requested guidance on what it means to modify the judgment. A third sought to clarify that a court may choose not to modify the payment amount or may modify an installment plan by reducing the amount, giving a defendant more time to pay, or approving community service. A fourth requested revising the rule to clarify that a court is not prevented from denying a request to modify the payment terms for reasons other than those specified in subdivision (e)—namely, because an unreasonable amount of time had passed or the defendant had made an unreasonable number of requests.

In response to these comments, the committees added an advisory committee comment to subdivision (e)(1) to provide guidance on the various options available to courts in adjudicating a defendant's petition to modify the payment terms. The listed options include a court's discretionary authority to deny the defendant's request. Other options available, if the court exercises its discretion to grant a defendant's request, include modifying the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit.

***Request by defendant for a court appearance.*** Proposed rule 4.106(e)(1) allows a defendant to request a court appearance for adjudication of their petition to modify the payment terms. One commenter requested that the committees remove the language allowing a defendant to request a court appearance. While the committees agree that written petitions should be encouraged when feasible, they declined to remove the language as recommended.

***Additional notice to defendants after a failure to pay.*** One commenter requested that the committees revise proposed rule 4.106(e) to require that courts notify defendants—after a failure to pay—of the missed payment and available options. The commenter also suggested that a defendant should be provided with an opportunity to remedy the missed payment before the court imposes a civil assessment or refers the defendant for license suspension. The committees declined to provide for additional notice requirements or procedures beyond those already required by statute and these proposed rules if a defendant has failed to pay, but they may consider these suggestions in developing future proposals.

***Denials based on an unreasonable amount of time or number of requests.*** As circulated, proposed rule 4.106(e)(5) provided that a court may deny the defendant's request and order no further hearings if an unreasonable amount of time had passed or the defendant had made an unreasonable number of requests.

A commenter requested modifying subdivision (e)(5) to clarify that it did not apply if the defendant petitioned to modify the payment terms based on ability to pay. Another asked that the committees remove subdivision (e)(5) in its entirety because it would contravene Vehicle Code section 42003 and other statutory provisions. To address these concerns, the committees added language to subdivision (e)(5) to clarify that its scope did not extend to petitions based on ability to pay.

Another commenter requested that the committees provide clearer guidelines for determining how much time and how many requests would be unreasonable. The committees declined to limit judicial discretion by providing more information on these terms.

#### **Comments on proposed rule 4.106(f)**

Proposed rule 4.106(f) provides that courts may require the deposit of bail before adjudicating a defendant's request for a trial de novo after entry of judgment in absentia under Vehicle Code section 40903.

*Vacating the judgment after receiving a bail deposit.* As circulated, proposed rule 4.106(f) required courts to vacate the judgment upon receipt of the bail deposit. One commenter indicated that vacating the judgment would result in significant costs and would double and possibly triple the work of courts. Based on these concerns, the committees elected to remove the language requiring courts to vacate the judgment after receipt of bail.

*Allowing courts to require the deposit of bail.* One commenter requested that the committees remove subdivision (f) entirely from the proposal because it allows a court to require bail if a defendant requests a trial de novo after an in absentia conviction.

Vehicle Code section 40902 allows defendants to proceed with a trials by written declaration only if the defendant first deposits bail. Section 40902 also entitles a defendant to a trial de novo if the defendant is not content with the outcome of the trial by written declaration. Although section 40903 provides that a defendant who fails to appear may be deemed to have elected to have a trial by written declaration, it does not expressly incorporate the provisions of section 40902, including the right to a trial de novo. The committees intend for this rule to clarify that defendants are entitled to a trial de novo after a conviction in absentia under section 40903. But if a defendant elects to take advantage of the right to a trial de novo, subdivision (f) requires, consistent with section 40902, that the defendant deposit bail. The committees decline to remove subdivision (f) as requested. With subdivision (f), they intend to provide defendants convicted after a trial in absentia under section 40903 with both the rights and responsibilities of section 40902.

#### **Comments on proposed rule 4.106(g)**

Proposed rule 4.106(g) addresses referrals to the Department of Motor Vehicles (DMV) for license suspension under Vehicle Code sections 40509(b) or 40509.5(b) after a defendant fails to

pay. Specifically, it requires that the court first provide the defendant with notice and an opportunity to be heard on inability to pay before a referral to the DMV.

***Specifying where the court may provide notice.*** As circulated, proposed rule 4.106(g) did not address how courts might provide defendants with notice that they could be heard on their ability to pay. The circulated proposal also included an advisory committee comment to this subdivision, which specified that the court must provide the defendant with notice on ability to pay and with instructions.

Seven commenters requested that the committees revise this subdivision to clarify where courts should provide this notice. Some also recommended specifying that the courts may provide this notice on the reminder notice required by proposed rule 4.107 or on the civil assessment notice. The committees elected to revise subdivision (f) to clarify that the notice may be provided on the reminder notice, the civil assessment notice, or any other notice provided to the defendant. They also deleted the circulated advisory committee comment because they viewed it as redundant to the revised rule.

***Allowing for ability-to-pay hearings upon request before referring to DMV for license suspension.*** Proposed rule 4.106(g) provides for notice and an opportunity to be heard before a court may refer a defendant who fails to pay to the DMV for license suspension. One commenter requested that the committees replace the language providing for “an opportunity to be heard” with “an opportunity for a determination of ability to pay.”

The committees declined to incorporate this suggestion into the proposal. Ensuring opportunity for a hearing if requested by the defendant before referring the defendant to DMV for license suspension because of a failure to pay is compatible with due process principles. Nonetheless, courts are encouraged to utilize written petitions if the defendant and court are mutually agreeable to adjudication by written petition. This rule does not preclude them from so doing.

***Expanding subdivision (g) to address failures to appear.*** As circulated, proposed rule 4.106 addresses referrals to the DMV for failures to pay. One commenter requested that the committees expand subdivision (g) to also address failures to appear. The committees declined to expand subdivision (g) because this request is outside the scope of the present proposal. This subdivision governs notifications to DMV under Vehicle Code sections 40509(b) and 40509.5(b), which apply only to failures to pay. The committees may consider developing future proposals to address procedures for license suspension when a defendant fails to appear.

***Concerns regarding driver’s license suspensions.*** Although one commenter expressed concerns that these proposals do not curb the use of license suspensions as a debt collection tool, this proposal would ensure that defendants are afforded due process (notice and the opportunity to be heard on ability to pay) before a court may suspend a driver’s license for failure to pay.

### **Comments on proposed rule 4.107**

Standard 4.41 of the California Standards of Judicial Administration currently provides guidance for courts if they elect to send a courtesy notice to defendants who receive traffic citations. Proposed rule 4.107 would convert standard 4.41 into a rule of court and would require that all courts send these notices.

***Renaming the notice.*** The circulated proposal retained the name “courtesy notice” in referring to these notices. Two commenters recommended renaming these notices because they would be mandatory under the proposed rule. The committees agreed and incorporated one commenter’s specific suggestion to rename the notices as “reminder notices” into the proposal.

***Sending reminder notices to an address provided to the court.*** One commenter requested that courts send reminder notices not only to the address on the Notice to Appear, but also to the last known address in the DMV database. The committees declined to make this change as requested because it would be unduly burdensome on courts. However, recognizing that a defendant may provide the court with an address that differs from the address on the Notice to Appear, the committees elected to revise subdivision (a)(1) to provide that a court may also satisfy the requirement of providing the defendant with a reminder notice by sending the notice to an address otherwise provided to the court.

***Sending reminder notices electronically by e-mail and text message.*** The committees drafted circulated rule 4.107(a) broadly so that it would allow courts not only to mail paper reminder notices, but also to send electronic notices.

Three courts that do not currently provide courtesy notices submitted comments citing concerns with making these notices mandatory, including increased costs. All three contended that a robust website would be able to provide defendants with sufficient information about their traffic case. One also suggested that requiring courtesy notices would be a regressive rather than a progressive measure, as courts are moving to paperless case environments.

Another commenter recommended that the Judicial Council initiate an electronic notification system through which the court could send defendants notifications via text message or e-mail.

In light of these concerns and suggestions, and to increase access for defendants, the committees revised proposed rule 4.107(a) to provide further guidance for courts that want to send electronic reminder notices. The committees also added an advisory committee comment to further explain options available to the court for providing electronic notices.

***Consequences of failing to receive a reminder notice.*** Four commenters requested that the committees revise proposed rule 4.107 to clarify that a defendant’s failure to receive a reminder notice is not a defense for a failure to appear and does not relieve the defendant of the obligation to appear by the date on the citation. One also asked for clarification on applicable procedures if a notice were returned as undeliverable. To address these comments, the committees added

subdivision (a)(3) to clarify that a defendant's failure to receive a notice does not relieve the defendant of any obligations. In light of this revision, the court need not implement any procedures to track notices returned as undeliverable.

***Information provided to defendants on the reminder notice.*** As circulated, proposed rule 4.107 specified minimum information that had to appear on the reminder notice, as well as information that a court could provide if desired. Mirroring standard 4.41, the circulated rule recommended but did not require that the notice provide information to defendants about informal trial, trial by declaration, telephone scheduling options, correction requirements, and procedures for correctable violations. The committees received various comments in response to these provisions on required and recommended information in the reminder notices.

First, the circulated rule required that the notice provide information to defendants on the availability of community service and installment payment plans. One commenter explained that some courts do not offer community service or installment plans. The commenter requested that the committees add the phrase "if available" to clarify that a court need not provide information on community service or installment plans if the court does not currently offer these alternatives. The committees agreed and added the requested language to the proposal. Courts are not statutorily required to provide community service or installment plans; if a court does not offer these options, it need not provide any information about them on the reminder notice.

Second, a commenter requested that the reminder notice inform defendants that a traffic violator school will charge a separate fee. This commenter explained that defendants often believe they have already paid the fee to attend traffic violator school. The committees elected to incorporate this suggestion into the proposal as it provides defendants with additional information and avoids possible confusion.

Third, one commenter suggested that the information on trial by written declaration and telephone scheduling options should be mandatory on reminder notices. The committees revised the rule to provide that the reminder notice must provide information about trial by written declaration, informal trial if available, correction requirements and procedures for correctable offenses, and telephone and website scheduling options if available.

Fourth, based in part on comments received regarding the importance of court websites for providing information to defendants, the committees revised the rule to require that the reminder notice provide the court's website as part of the contact information for the court.

Lastly, one commenter requested the courts send any forms for requesting an ability-to-pay determination with the reminder notice. The committees declined this request because requiring that courts mail ability-to-pay or other forms with all reminder notices would be unduly burdensome. However, they did add an advisory committee comment to this rule to state preferred practices for enhancing defendants' access to relevant forms and information. The

advisory committee comment suggests providing direct links on electronic reminder notices and website addresses on paper notices for any information or local forms on the court's website.

### **Comments on proposed rule 4.335**

Proposed rule 4.335 addresses ability-to-pay determinations in infraction cases. The committees modeled the rule on Vehicle Code section 42003,<sup>3</sup> while also expanding on this authority and applying proposed rule 4.335 to nontraffic infraction offenses.

***Clarifying where courts may provide notice of the right to request an ability-to-pay determination.*** Proposed rule 4.335(b) requires that courts provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination. Two commenters requested that the committees clarify where to provide this notice. Whereas one recommended allowing courts to provide this notice at any time, including on the reminder notice, the other suggested that courts should make this notice available online and on the original citation. The committees agreed to provide further guidance for courts and added an advisory committee comment to subdivision (b) that would specify that the notice may be provided on the reminder notice, the civil assessment notice, a court's website, or any other notice provided to the defendant.

***Imposing limitations on requests for ability-to-pay determinations.*** Proposed rule 4.335(c) provides that a court, on a defendant's request, must consider his or her ability to pay. It clarifies that a defendant may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. It further clarifies that a defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time during the pendency of the judgment. Lastly, proposed rule 4.335(c) provides that if a defendant has already had an ability-to-pay determination, he or she may request another only based on changed circumstances. The committees received various comments suggesting that proposed rule 4.335(c) include time limits and other restrictions on requesting ability-to-pay determinations.

First, two commenters requested that the committees limit ability-to-pay determinations to preadjudication. Three others suggested restricting the time period in which a defendant may request an ability-to-pay determination. Two offered suggestions of 30 days and six months, while the third recognized that a court should accept the request for an ability-to-pay determination whenever a defendant is able to show changed circumstances. The committees declined to pursue the suggestions to impose a time limit because they modeled proposed rule

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<sup>3</sup> The committees closely examined Vehicle Code section 42003(c). While the plain language of section 42003 may not be clear, its legislative history strongly supports the conclusion that the Legislature intended for its ability-to-pay provisions to apply to the imposition of fines for all Vehicle Code violations and did not intend to limit its scope to the costs associated with probation's presentence investigation. (Assem. Comm. on Ways and Means, Analysis, Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 708 (1993–1994 Reg. Sess.) as amended Apr. 29, 1993.)

4.335 on Vehicle Code section 42003, which contemplates that defendants may request ability-to-pay determinations at adjudication and during the pendency of the judgment. For this reason, proposed rule 4.335 clarifies that its ability-to-pay provisions apply when a case is delinquent or referred to a comprehensive collection program.

Second, one commenter requested that the rule restrict the number of times a defendant could request an ability-to-pay determination. The committees declined to pursue this suggestion because Vehicle Code section 42003(e) contemplates that a defendant may make additional requests for ability-to-pay determinations based on changed circumstances during the pendency of the judgment and does not limit the number of such requests.

Third, another commenter requested that the committees revise rule 4.335 to provide that a defendant may request an initial ability-to-pay determination only up until the date the fine is due. The committees declined to pursue this suggestion. While Vehicle Code section 42003(c) contemplates that defendants may request an initial ability-to-pay determination at the time of adjudication, it is foreseeable that courts may adjudicate a case and render judgment in a defendant's absence under section 40903. If a court elects to proceed by trial in absentia under section 40903, the defendant would never have had an initial ability-to-pay determination from which changed circumstances could be determined.

Fourth, as circulated, proposed rule 4.335 allowed a court to deny a defendant's request for an ability-to-pay determination, order no further proceedings, and order that a case be referred to collections if the court determined that (1) an unreasonable amount of time had passed or (2) the defendant had made an unreasonable number of requests for an ability-to-pay determination. Whereas one commenter suggested providing further guidance on interpreting the phrase "an unreasonable amount of time," another expressed concern that the circulated rule was inconsistent with Vehicle Code section 42003. The committees agreed with the latter and decided to remove this provision from proposed rule 4.335.

Lastly, one commenter requested that the committees revise rule 4.335 to provide that a defendant must show good cause before receiving an ability-to-pay determination if the court has already sent the case to collections. The committees declined to incorporate this suggestion into the proposal. Vehicle Code section 42003(e) provides that a defendant may request an ability-to-pay determination based on changed circumstances at any time during the pendency of the judgment and does not contemplate any other limitations on the right of a defendant to make this request.

***Delegation to clerks or county revenue collections agencies.*** As circulated, proposed rule 4.335 delegated a preliminary step in making ability-to-pay determinations to clerks or county revenue collection agencies. The circulated rule allowed clerks and county revenue collections agents to make an initial determination of whether a defendant received public benefits or had a monthly income of 125 percent or less of the current poverty guidelines. The circulated rule also provided for review of this initial determination, as well as the ultimate determination of a defendant's

ability to pay, by a judicial officer. The committees proposed this limited delegation to clerks and county revenue agencies in an effort to provide for greater efficiencies.

Eight commenters expressed concerns over delegating ability-to-pay determinations to clerks and county revenue collections agencies. The commenters explained that evaluating ability to pay is not ministerial and instead falls squarely within judicial discretion. Two commenters also cited real or perceived conflicts of interest with delegating to a county revenue collections agency. And two commenters requested that the committees revise the circulated rule to clarify that a judicial officer has the discretion to order a hearing or review the petition on the written record.

The rule, as circulated, was not intended to eliminate judicial discretion. Because the comments received indicated general confusion over the intended scope of the delegation, the committees decided to remove the provisions on delegation and judicial review of that delegation from the proposal.<sup>4</sup> Instead, the committees have recommended revising the rule to contemplate that only judicial officers will conduct ability-to-pay determinations.

While removing the provisions on delegation, the committees have incorporated the suggestion to clarify that judicial officers have discretion to conduct their review of written requests for ability-to-pay determinations on the written record or to order a hearing. The committees also recommended adding an advisory committee comment instructing courts that they should consider factors including whether a defendant receives public benefits or has a monthly income of 125 percent or less of the current poverty guidelines in light of the importance of these factors in evaluating ability to pay.

***Alternatives available to the court in making ability-to-pay determinations.*** Proposed rule 4.335(c)(4) provides guidance for courts making ability-to-pay determinations on available options. These options include providing for payment on an installment plan, allowing the defendant to complete community service in lieu of paying a total fine, suspending the fine in whole or part, and offering an alternative disposition.

A commenter expressed concern because some courts do not offer community service. Because the committees do not intend for these rules to require courts that do not currently offer community service or installment plans to implement such programs, they revised proposed rule 4.335(c)(4) to clarify that the court may offer community service or installment plans if these alternatives are available.

Another commenter requested that the committees revise proposed rule 4.335(c)(4) to clarify that a court may suspend not only the fine, but also any fees, assessments, and other penalties. Two commenters requested clarification that a judicial officer may not remove all penalties. Another recommended that the rule provide that courts should first reduce or waive fines before

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<sup>4</sup> Because the committees see the potential benefit of delegation in this manner, they may continue to explore this option in future proposals.



converting any remaining fines and fees into community service or jail time. Another requested clarification on alternate dispositions.

The committees declined to further revise proposed rule 4.335(c)(4) because these matters fall within judicial discretion. However, they added to the advisory committee comment to clarify that (1) a court does not have discretion to alter any mandatory fees imposed by statute, even though it may suspend the base fine in whole; and (2) regardless of whether the defendant has demonstrated an inability to pay, a court may still consider the defendant's criminal history and the severity of the offense among other factors.

### **Global comments**

This proposal also elicited global comments on language access and developing forms to implement its provisions.

***Expanding language access.*** A number of commenters requested that the committees revise the proposal to provide greater language access for defendants who do not understand English. In supporting the proposed amendment to rule 4.105, one commenter suggested also requiring that the links on local court websites to statewide self-help materials make clear to defendants that these materials are available in Spanish. Another suggested requiring that courts translate the notices described in proposed rule 4.106 into the most common languages. Another requested that courts translate the reminder notices required by proposed rule 4.107 into the defendant's preferred language where available. Two additional commenters asked that courts make notices informing defendants of their right to request an ability-to-pay determination and instructions available in other languages.

While these suggestions are outside the scope of the present proposal, the committees recognize the importance of increasing access to the courts for defendants who do not read English. In developing future proposals, especially any model forms or optional Judicial Council forms, the committees may consider these suggestions. The committees also note that the Judicial Council's Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials.

***Developing forms to implement these rules.*** One commenter requested that the committees develop a Judicial Council form for defendants to request vacating civil assessments. Two other commenters suggesting creating ability-to-pay forms to assist courts in determining a defendant's ability to pay. Another commenter recommended that the council ensure that reminder notices are understandable and readable for all members of the public. While outside the scope of the present proposal, the committees may consider these suggestions in developing future forms proposals.

## **Policy implications**

Several commenters expressed concerns with the laws governing the imposition of fines in infraction cases, especially where court funding is based in part on the imposition of fines, fees, and assessments. The committees recognize these concerns and the need to continue to address issues surrounding court-imposed fines and fees and related issues, and for the Legislature to address these issues. The committees also note that the Chief Justice's Commission on the Future of California's Court System is exploring these issues.

The committees also recognize that some courts are concerned about the costs required to implement this proposal. The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits of these proposed rules, which are necessary to promote access and fairness, outweigh the costs. The committees have attempted to strike a balance between providing defendants with adequate due process and easing the burden on courts where possible. Also, in response to these concerns, the committees have recommended an extended implementation date for the rule proposals.

## **Implementation Requirements, Costs, and Operational Impacts**

Courts will need to update local websites, and court notices and provide training for court staff and judicial officers regarding these changes for processing infraction cases. The committees are sensitive to the concern that the rules may require changes to court forms and procedures.

***Increased costs resulting from requiring reminder notices.*** An informal survey of courts indicates that approximately 53 out of 58 superior courts currently provide courtesy notices of some type. Three courts that do not currently send courtesy notices submitted comments indicating that requiring reminder notices under proposed rule 4.107 will increase costs. Two other courts that already provide these notices to defendants also cited increased costs resulting primarily from providing additional information on these notices.

Requiring that all courts send these notices will increase the fiscal burden on courts that do not currently provide them. While sensitive to these concerns, the committees decided, on balance, that the benefits of requiring reminder notices outweigh the costs. These notices provide defendants with valuable information and advance due process requirements. To ease any anticipated financial burden on the courts, the committees revised the proposal to provide additional guidance to courts on sending these notices electronically.

***Increased workload and costs related to ability to pay.*** Six commenters expressed concern regarding increased workload and costs related to providing notices under proposed rule 4.335. By removing the provisions on delegation and clarifying that the notice may be provided on existing notices, the committees attempted to reduce the burden on courts.

It is also possible that with increased notice about the procedure for requesting an ability-to-pay determination, more defendants may request review of their ability to pay. The committees acknowledge the potential increased workload for court staff and judicial officers. However, the

committees concluded that any increased burdens are outweighed by the procedural fairness that these rules will advance.

***Extended implementation date.*** The committees are sensitive to the impact on the courts in implementing these rules, if amended and adopted, by a January 1, 2017 effective date. Several commenters suggested a delayed implementation date due to the significant changes in these proposals.

The committees recognize that this proposal may require changes to court procedure, forms, and operations and may result in an increase in workload. In balancing their concern for the courts with the need for speedy implementation of rules that provide increased access and fairness for defendants, the committees have decided to recommend that the rules become effective January 1, 2017, while also allowing courts additional time to implement these rules. The committees have concluded that an extended implementation date of May 1, 2017, is warranted, but urge courts to implement these rules as soon as reasonably possible.

#### **Attachments and Links**

1. Cal. Rules of Court, rules 4.105, 4.106, 4.107, and 4.335 at pages 23–31
2. Chart of comments at pages 32–171

California Rules of Court, rule 4.105 is amended, rules 4.106, 4.107, and 4.335 are adopted, and California Standards of Judicial Administration, standard 4.41 is repealed effective January 1, 2017, to read:

1 **Title 4. Criminal Rules**

2  
3 **Rule 4.105. Appearance without deposit of bail in infraction cases**

4  
5 **(a) – (b) \* \* \***

6  
7 **(c) Deposit of bail**

8  
9 (1) – (2) \* \* \*

10  
11 (3) Courts may require a deposit of bail before trial if the court determines that  
12 the defendant is unlikely to appear as ordered without a deposit of bail and  
13 the court expressly states the reasons for the finding.

14  
15 (4) \* \* \*

16  
17 **(d) Notice**

18  
19 Courts must inform defendants of the option to appear in court without the deposit  
20 of bail in any instructions or other materials courts provide for the public that relate  
21 to bail for infractions, including any website information, written instructions,  
22 courtesy notices, and forms.

23  
24 **(e) Local Website Information**

25  
26 The website for each trial court must include a link to the traffic self-help  
27 information posted at: <http://www.courts.ca.gov/selfhelp-traffic.htm>.

28  
29 **Advisory Committee Comment**

30  
31 \* \* \*

32  
33 **Rule 4.106. Failure to appear or failure to pay for a Notice to Appear issued for an**  
34 **infraction offense**

35  
36 **(a) Application**

37  
38 This rule applies to infraction offenses for which the defendant has received a  
39 written notice to appear and has failed to appear or failed to pay.

40

1 **(b) Definitions**  
2

3 As used in this rule, “failure to appear” and “failure to pay” mean failure to appear  
4 and failure to pay as defined in section 1214.1(a).  
5

6 **(c) Procedure for consideration of good cause for failure to appear or pay**  
7

- 8 (1) A notice of a civil assessment under section 1214.1(b) must inform the  
9 defendant of his or her right to petition that the civil assessment be vacated  
10 for good cause and must include information about the process for vacating  
11 or reducing the assessment.  
12
- 13 (2) When a notice of civil assessment is given, a defendant may, within the time  
14 specified in the notice, move by written petition to vacate or reduce the  
15 assessment.  
16
- 17 (3) When a court imposes a civil assessment for failure to appear or pay, the  
18 defendant may petition that the court vacate or reduce the civil assessment  
19 without paying any bail, fines, penalties, fees, or assessments.  
20
- 21 (4) A petition to vacate an assessment does not stay the operation of any order  
22 requiring the payment of bail, fines, penalties, fees, or assessment unless  
23 specifically ordered by the court.  
24
- 25 (5) The court must vacate the assessment upon a showing of good cause under  
26 section 1214.1(b)(1) for failure to appear or failure to pay.  
27
- 28 (6) If the defendant does not establish good cause, the court may still exercise its  
29 discretion under section 1214.1(a) to reconsider:  
30
- 31 (A) Whether a civil assessment should be imposed; and  
32
- 33 (B) If so, the amount of the assessment.  
34
- 35 (7) In exercising its discretion, the court may consider such factors as a  
36 defendant’s due diligence in appearing or paying after notice of the  
37 assessment has been given under section 1214.1(b)(1) and the defendant’s  
38 financial circumstances.  
39

40 **(d) Procedure for unpaid bail referred to collection as delinquent debt in**  
41 **unadjudicated cases**  
42

- 1 (1) When a case has not been adjudicated and a court refers it to a  
2 comprehensive collection program as provided in section 1463.007(b)(1) as  
3 delinquent debt, the defendant may schedule a hearing for adjudication of the  
4 underlying charge(s) without payment of the bail amount.  
5  
6 (2) The defendant may request an appearance date to adjudicate the underlying  
7 charges by written petition or alternative method provided by the court.  
8 Alternatively, the defendant may request or the court may direct a court  
9 appearance.  
10  
11 (3) A court may require a deposit of bail before adjudication of the underlying  
12 charges if the court finds that the defendant is unlikely to appear as ordered  
13 without a deposit of bail and the court expressly states the reasons for the  
14 finding. The court must not require payment of the civil assessment before  
15 adjudication.  
16

17 **(e) Procedure for failure to pay or make a payment under an installment payment**  
18 **plan**  
19

- 20 (1) When a defendant fails to pay a fine or make a payment under an installment  
21 plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or  
22 42007, the court must permit the defendant to appear by written petition to  
23 modify the payment terms. Alternatively, the defendant may request or the  
24 court may direct a court appearance.  
25  
26 (2) The court must not require payment of bail, fines, penalties, fees, or  
27 assessments to consider the petition.  
28  
29 (3) The petition to modify the payment terms does not stay the operation of any  
30 order requiring the payment of bail, fines, penalties, fees, or assessments  
31 unless specifically ordered by the court.  
32  
33 (4) If the defendant petitions to modify the payment terms based on an inability  
34 to pay, the procedures stated in rule 4.335 apply.  
35  
36 (5) If the petition to modify the payment terms is not based on an inability to  
37 pay, the court may deny the defendant's request to modify the payment terms  
38 and order no further proceedings if the court determines that:  
39  
40 (A) An unreasonable amount of time has passed; or  
41  
42 (B) The defendant has made an unreasonable number of requests to modify  
43 the payment terms.

1  
2 **(f) Procedure after a trial by written declaration in absentia for a traffic**  
3 **infraction**  
4

5 When the court issues a judgment under Vehicle Code section 40903 and a  
6 defendant requests a trial de novo within the time permitted, courts may require the  
7 defendant to deposit bail.  
8

9 **(g) Procedure for referring a defendant to the Department of Motor Vehicles**  
10 **(DMV) for license suspension for failure to pay a fine**  
11

12 Before a court may notify the DMV under Vehicle Code sections 40509(b) or  
13 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the  
14 court must provide the defendant with notice of and an opportunity to be heard on  
15 the inability to pay. This notice may be provided on the notice required in rule  
16 4.107, the civil assessment notice, or any other notice provided to the defendant.  
17

18 **Advisory Committee Comment**  
19

20 **Subdivision (a).** The rule is intended to apply only to an infraction offense for which the  
21 defendant (1) has received a written notice to appear and (2) has failed to appear by the  
22 appearance date or an approved extension of that date or has failed to pay as required.  
23

24 **Subdivision (c)(3).** Circumstances that indicate good cause may include, but are not limited to,  
25 the defendant's hospitalization, incapacitation, or incarceration; military duty required of the  
26 defendant; death or hospitalization of the defendant's dependent or immediate family member;  
27 caregiver responsibility for a sick or disabled dependent or immediate family member of the  
28 defendant; or an extraordinary reason, beyond the defendant's control, that prevented the  
29 defendant from making an appearance or payment on or before the date listed on the notice to  
30 appear.  
31

32 **Subdivision (e)(1).** A court may exercise its discretion to deny a defendant's request to modify  
33 the payment terms. If the court chooses to grant the defendant's request, the court may modify the  
34 payment terms by reducing or suspending the base fine, lowering the payments, converting the  
35 remaining balance to community service, or otherwise modifying the payment terms as the court  
36 sees fit.  
37

38 **Subdivision (g).** A hearing is not required unless requested by the defendant or directed by the  
39 court.  
40

41 **Rule 4.107. Mandatory reminder notice—traffic procedures**  
42

1 **(a) Mandatory reminder notice**

- 2
- 3 (1) Each court must send a reminder notice to the address shown on the *Notice to*  
4 *Appear*, unless the defendant otherwise notifies the court of a different  
5 address.
- 6
- 7 (2) The court may satisfy the requirement in paragraph (1) by sending the notice  
8 electronically, including by e-mail or text message, to the defendant. By  
9 providing an electronic address or number to the court or to a law  
10 enforcement officer at the time of signing the promise to appear, a defendant  
11 consents to receiving the reminder notice electronically at that electronic  
12 address or number.
- 13
- 14 (3) The failure to receive a reminder notice does not relieve the defendant of the  
15 obligation to appear by the date stated in the *Notice to Appear*.

16

17 **(b) Minimum information in reminder notice**

18

19 In addition to information obtained from the *Notice to Appear*, the reminder notice  
20 must contain at least the following information:

- 21
- 22 (1) An appearance date and location;
- 23
- 24 (2) Whether a court appearance is mandatory or optional;
- 25
- 26 (3) The total bail amount and payment options;
- 27
- 28 (4) The notice about traffic school required under Vehicle Code section 42007, if  
29 applicable;
- 30
- 31 (5) Notice that a traffic violator school will charge a fee in addition to the  
32 administrative fee charged by the court;
- 33
- 34 (6) The potential consequences for failure to appear, including a driver's license  
35 hold or suspension, a civil assessment of up to \$300, a new charge for failure  
36 to appear, a warrant of arrest, or some combination of these consequences, if  
37 applicable;
- 38
- 39 (7) The potential consequences for failure to pay a fine, including a driver's  
40 license hold or suspension, a civil assessment of up to \$300, a new charge for  
41 failure to pay a fine, a warrant of arrest, or some combination of these  
42 consequences, if applicable;
- 43



- 1       (8) The right to request an ability-to-pay determination;  
2  
3       (9) Notice of the option to pay bail through community service (if available) and  
4       installment plans (if available);  
5  
6       (10) Contact information for the court, including the court’s website;  
7  
8       (11) Information regarding trial by declaration, informal trial (if available), and  
9       telephone or website scheduling options (if available); and  
10  
11       (12) Correction requirements and procedures for correctable violations.  
12

13                               **Advisory Committee Comment**  
14

15       **Subdivision (a)(2).** The court may provide a means for obtaining the defendant’s consent and  
16 designated electronic address or number on its local website. Because notices to appear state the  
17 website address for the superior court in each county, this location may increase the number of  
18 defendants who become aware and take advantage of this option. To obtain the defendant’s  
19 electronic address or number at the time of signing the promise to appear, the court may need to  
20 collaborate with local law enforcement agencies.  
21

22       **Subdivision (b).** While not required, some local court websites may provide information about  
23 local court processes and local forms related to the information on the reminder notice. If in  
24 electronic form, the reminder notice should include direct links to any information and forms on  
25 the local court website. If in paper form, the reminder notice may include the website addresses  
26 for any information and forms on the local court website.  
27

28       **Rule 4.335. Ability to-pay determinations for infraction offenses**  
29

30       **(a) Application**  
31

32       This rule applies to any infraction offense for which the defendant has received a  
33 written *Notice to Appear*.  
34

35       **(b) Required notice regarding an ability-to-pay determination**  
36

37       Courts must provide defendants with notice of their right to request an ability-to-  
38 pay determination and make available instructions or other materials for requesting  
39 an ability-to-pay determination.  
40

41       **(c) Procedure for determining ability to pay**  
42



1 Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief,  
2 General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and  
3 Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal; and (2) a  
4 monthly income of 125 percent or less of the current poverty guidelines, updated periodically in  
5 the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. §  
6 9902(2).

7  
8 **Subdivision (c)(4).** The amount and manner of paying the total fine must be reasonable and  
9 compatible with the defendant’s financial ability. Even if the defendant has not demonstrated an  
10 inability to pay, the court may still exercise discretion. Regardless of whether the defendant has  
11 demonstrated an inability to pay, the court in exercising its discretion under this subdivision may  
12 consider the defendant’s prior criminal history and the severity of the offense, among other  
13 factors. While the base fine may be suspended in whole or in part in the court’s discretion, this  
14 subdivision is not intended to affect the imposition of any mandatory fees.

## 15 Standards of Judicial Administration

### 16 Title 4. Standards for Criminal Cases

#### 17 Standard 4.41. ~~Courtesy notice—traffic procedures~~

##### 18 (a) ~~Mailed courtesy notice~~

19 Each court should promptly mail a “courtesy notice” to the address shown on the  
20 Notice to Appear. The date of mailing should allow for the plea by mail option in  
21 infraction cases.

##### 22 (b) ~~Minimum information in courtesy notice~~

23 In addition to information obtained from the Notice to Appear, the courtesy notice  
24 should contain at least the following information:

- 25 (1) ~~An appearance date, time, and location;~~
  - 26 (2) ~~Whether a court appearance is mandatory or optional;~~
  - 27 (3) ~~The total bail amount if forfeitable;~~
  - 28 (4) ~~The procedure required for remitting bail;~~
  - 29 (5) ~~The plea by mail option in infraction cases and the number of appearances~~  
30 ~~required where trial is requested;~~
  - 31 (6) ~~The consequences of failure to appear; and~~
- 32  
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1           ~~(7) A telephone number to call for additional information.~~

2  
3           ~~(e) **Additional information in courtesy notice**~~

4  
5           ~~Courts should provide additional information in the courtesy notice, as appropriate,~~  
6           ~~including the following:~~

7  
8           ~~(1) Informal trial, trial by declaration, traffic violators' school, and telephone~~  
9           ~~scheduling options; and~~

10  
11           ~~(2) Correction requirements and procedures.~~

DRAFT

**SP16-08**

**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

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	<b>Commentator</b>	<b>Position</b>	<b>Committee Response</b>	
1.	<p>ACLU of California By Christine P. Sun Micaela Davis</p> <p>A New Way of Life Reentry Project By Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By Elisa Della-Piana</p> <p>Bay Area Legal Aid By Rebekah Evenson</p> <p>Bay Area Legal Aid By Stephen Bingham Retired Attorney</p> <p>Western Center on Law and Poverty By Antionette Dozier</p> <p>Legal Services for Prisoners with Children By Brittany Stonesifer</p> <p>East Bay Community Law Center By Brandon Greene</p> <p>USC Gould School of Law By Clare Pastore</p> <p>Neighborhood Legal Services of Los Angeles County</p>	N/I	<p>We, the undersigned, are civil rights and legal services organizations assisting low-income Californians who are charged with traffic infractions and are unable to pay the exorbitant fines, fees, and surcharges associated with these tickets. For the past several years, we, individually and in coalition, have advocated for systemic change in the traffic court system to help ensure that low-income defendants do not experience disproportionate and unconstitutional harm.</p> <p>Although we commend the Judicial Council’s Traffic Advisory Committee and Criminal Law Advisory Committee (“Committee”) for incorporating many of our prior comments in the new set of proposed rules and revised notices, we reiterate our primary concerns that the traffic fines and fees are excessive, and that the courts should not be using driver’s license suspension as a means to coerce payment. Even if courts adopt all of the model procedural protections under consideration, the dollar amounts of the traffic fines and fees will still be excessive, and some low-income families will still likely slip through the cracks – because they are homeless and do not receive the newly revised notices, because they cannot read the notices or understand how to clear their tickets or reduce their fines, because their financial circumstances change and they cannot make the agreed-upon payments, or for other reasons. The courts should not be in the business of saddling</p>	<p>The committees appreciate the input of these organizations.</p>

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<p>by Eliza Schafner</p>		<p>low-income families with crushing debts, or with suspending driver’s licenses that are the key to our clients’ economic survival.</p> <p>Recognizing that significant additional reforms will be needed to resolve these underlying problems, we offer the following comments on revised Rule 4.105, proposed rules 4.106, 4.107 and 4.335 and revised forms TR-300 and 310. We also highlight critical areas that need to be addressed by the Judicial Council in further rule-making. The comments are not intended to be exhaustive and we remain committed to working with the Judicial Council to find an adequate, fair, and just solution for all traffic court defendants.</p> <p><b>Proposed Rule 4.105 – Appearance without deposit of bail</b></p> <p>The amendment to Rule 4.105 would require that courts add a link to the state traffic court self-help website on their respective court websites. Although we support providing more information to defendants on their options to dispose of citations, the rules concerning deposit of bail should be modified further in order to ensure equitable access to justice.</p> <p>Specifically, it is our position that traffic court defendants should not be required to post “bail” in order to get a trial by written declaration or to set a trial date without appearing for</p>	<p>Response: The committees decline to pursue this suggestion at this time. Regarding trial by written declaration, the deposit of bail is required by Vehicle Code section 40902 if a defendant elects</p>

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			<p>arraignment—such a policy creates a two-tiered system of justice where the privileged are able to avail themselves of convenient court processes but others are not. It is particularly inequitable to require payment to schedule a court date without an arraignment, given that low-income defendants are more likely to have difficulty finding transportation to court, and may not be able to take time off from hourly-wage jobs. Given the move away from “pay to play” rules, the Judicial Council should explicitly encourage the courts to stop requiring deposit of bail as a condition to accessing these procedures or, at a minimum, to set a bail schedule for these procedures that is “reasonable and sufficient for the appearance of the defendant.” <i>See Veh. Code § 40511</i>. “Bail” in the amount of the full fine, fees, and surcharges owed on the ticket is not “reasonable” and is indeed, excessive.</p> <p>In addition, we remain concerned about courts’ practices in determining likelihood of appearing at trial under Rule 4.105(c)(3). The rule requires a deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail. <i>See Rule 4.105(c)(3)</i>. It is standard practice in some courts, Los Angeles Superior for example, for the court to make a finding that a person is unlikely to appear at the next court date, and to require deposit of bail for trial, simply because</p>	<p>to proceed with trial by written declaration. Therefore this cannot be changed by rule of court; it can only be changed by legislation. With respect to bail to set a trial date without appearing for arraignment, the proposal that was circulated for public comment did not include a rule change eliminating bail in these proceedings. Under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal.</p>

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			<p>the person had a failure to appear on that case. This means that even if the person had good cause for the failure to appear, the person would be required to post bail in order to get a trial at which she could demonstrate that good cause.<sup>1</sup> We hope that proposed Rule 4.106(c)(3), which mandates that “[c]ourts must permit a defendant to present a showing of good cause for failure to appear or pay without requiring . . . payment of bail, fines, penalties, fees, or assessments,” remedies this problem.</p> <p>[Footnote in original] <sup>1</sup> According to a publicly filed declaration by Greg Blair, Senior Administrator for the Metropolitan Courthouse of the Superior Court of Los Angeles County, approximately 8,000 complaints for failure to appear were filed <i>every week</i> in the fiscal year of 2007-2008. See Respondent’s Return to Sept. 12, 2012 Order to Show Cause at Attached Exhibit (Second Declaration of Greg Blair, Senior Administrator for the Metro. Courthouse of the Superior Ct. of L.A. County.), <i>Steen v. App. Div., Superior Ct. of L.A. County</i> (Cal. 2012) (No. S174733). In a single year, that means approximately 416,000 failures to appear were entered. Assuming that the rate of complaints filed for failure to appear remained roughly stagnant in the last seven years, that is a total of 3,120,000 failures to appear filed since to date since 2007. Proposed Rule 4.105 in its current draft form</p>	



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			<p>would be toothless to these millions of defendants in Los Angeles and will restrict, not promote, access to justice in their individual cases.</p> <p>However, Rule 4.105 should be amended to make clear that it is subject to Rule 4.106(c)(3). Rule 4.105 must also be amended to specify that a failure to appear may not in and of itself be grounds for requiring payment of bail for a trial under Rule 4.105(c)(3).</p> <p><b>Proposed Rule 4.106 – Failure to appear or failure to pay for a Notice to Appear issued for an infraction offense</b></p> <p>We commend the Committee for acknowledging that current court policies around the imposition of civil assessments and other sanctions for failures to pay or appear are overly punitive and for incorporating some of our prior recommendations in the new proposed rule. However, there are a number of ways in which Proposed Rule 4.106 should be reframed and amended in order to provide defendants with adequate notice and a meaningful opportunity to be heard on these issues.</p> <p><u>4.106(c) – Procedure for consideration of good cause for failure to appear or pay</u></p> <p>We thank the Committee for incorporating our prior comments into the new version of the rule,</p>	<p>Response: The committees decline to expand rule 4.105 as recommended, which would limit permissible judicial discretion.</p>

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			<p>including: 1) the requirement that the court inform the defendant of the right to petition to vacate the civil assessment and instructions on how to do so, <i>see</i> 4.106(c)(1); 2) clarifying that a defendant may always submit a written petition to vacate, not simply upon order by the court, <i>see</i> 4.106(c)(2); 3) clarifying that the court must vacate the assessment upon a showing of good cause, <i>see</i> 4.106(c)(5); and 4) reminding the courts that they have discretion to consider whether an assessment should be imposed and if so, the amount, <i>see</i> 4.106(c)(6). We also continue to support Rule 4.106(c)(3)'s provision that the court may not require a defendant to deposit bail in order to present good cause for failure to pay or failure to appear. However, we urge the Committee to strengthen the rules in the following ways in order to fully protect defendants' rights.</p> <p><i>First</i>, Rule 4.106(c) should be reframed to clarify that the imposition of a civil assessment on the front-end is not mandatory and should not be automatic. Penal Code § 1214.1 states a court <i>may</i> impose a civil assessment of <i>up to</i> \$300. However, many courts automatically impose the maximum amount for a failure to appear or failure to pay, even in the context of a missed installment payment of just \$20 or \$30. The \$300 late penalty fee is among the most stringent in the nation<sup>2</sup> and the automatic levying of a late fee in this amount may violate the Eighth Amendment's prohibition on</p>	<p>Response: The committees decline to pursue this suggestion at this time. Establishing criteria for and the manner of imposing the civil assessment are outside of the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider adopting proposals in the future to</p>

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			<p>excessive fines and fees. The civil assessment should not be used as an additional punishment for poverty.</p> <p>[Footnote in original] <sup>3</sup> See, e.g., Beth A. Colgan, “Reviving the Excessive Fines Clause,” 102 Cal. L. Rev. 277, 289, fn. 55 (2014) (comparing various states’ statutory late fee assessments: ALA. CODE § 12-17-225.4 (2006) (30 percent of delinquent amount); ARIZ. REV. STAT. ANN. § 12-116.03 (West 2003) (“reasonable costs”); CAL. PENAL CODE § 1214.1(A) (West 2011) (up to \$300); FLA. STAT. ANN. § 28.246(6) (West 2010) (up to 40 percent of amount owed); 730 ILL. COMP. STAT. 5/5-9-3(e) (West 2007) (30 percent of delinquent amount); MICH. COMP. LAWS ANN. § 600.4803(1) (West 2013) (20 percent of delinquent amount); N.C. GEN. STAT. ANN. § 7A-321(b)(1) (West 2004) (lesser of the average cost of collecting debt or 20 percent of the delinquent amount); TEX. LOC. GOV’T CODE ANN. § 133.103(a) (West 2013) (\$25 fee for payments made thirty-one days or more after judgment).</p> <p>The Judicial Council should also establish criteria for the courts to use in determining whether to impose any civil assessment at all and guidelines on appropriate and non-punitive assessment amounts. For instance, prior to levying an assessment for failure to appear or</p>	<p>establish criteria for the initial imposition of the civil assessment.</p> <p>Response: Establishing criteria for and the manner of imposing the civil assessment are outside of the scope of the current rules proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for</p>

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			<p>failure to pay, the court should consider a person’s diligence in complying with prior court orders and payments, any information the court may have about the person’s financial circumstances – whether obtained through an ability to pay determination, an amnesty application, or otherwise – and whether factors such as the court’s own delays in processing the ticket contributed to a defendant missing her court date or otherwise failing to comply with a court order.</p> <p><i>Second</i>, Rule 4.106(c)(2) should be amended to eliminate the 20-day time limit in which a defendant may petition to vacate an assessment. It is likely that homeless individuals or those with unstable living conditions will not have received notice about the failure to appear or pay or the civil assessment being added. Even if our clients do receive notice, life circumstances, including homelessness, make it very difficult to respond to the court in that short amount of time. Instead, a defendant should be able to make a showing of good cause for failure to appear or to pay at any point, including after the civil assessment is levied. This mirrors Proposed Rule 4.335 which permits a defendant to request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.</p>	<p>public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider adopting proposals in the future to establish criteria for initial imposition of the civil assessment. Proposed rule 4.106(c)(6) includes examples of factors that courts may consider when reconsidering whether a civil assessment should be imposed, including a defendant’s due diligence.</p> <p>Response: The committees agree with this recommendation to eliminate the 20-day time limit from the proposed rule. Penal Code section 1214.1 provides that the civil assessment shall not become effective until “at least” 20 days after the court sends a notice, and if the defendant appears within the time specified in the notice and shows good cause, the court must vacate the assessment. Individual courts may provide for times longer than 20 days under section 1214.1, and this proposed rule is not intended to limit the court’s discretion. However, allowing a defendant to come back at any time to vacate the civil assessment, as this comment also recommends, might conflict with statute and require a legislative change.</p>

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			<p><i>Third</i>, Rule 4.106(c)(4), which states that a petition to vacate does not stay any order requiring payment of bail, fees or assessments should be stricken. Instead, the filing of a petition should stay any of those orders. The rule should also specify that any orders of license suspension that have been initiated be recalled upon the filing of a petition to vacate. Otherwise defendants who have good cause may be preemptively sanctioned and could face irreparable harm if their license is in fact suspended.</p> <p><i>Fourth</i>, Rule 4.106(c)(5) should be amended to expand the basis for determining good cause to vacate an assessment. Although the basis for a finding of good cause is not limited in the governing statute, <i>see</i> Penal Code § 1214.1, most courts restrict a finding of good cause to instances involving hospitalization, incarceration, active military duty or death of an immediate family member, as is currently specified in the advisory comments to the rule.</p> <p>It is critical that the Judicial Council expand the bases for good cause for failure to appear or failure to pay, including explicitly listing inability to pay as a ground for showing good cause, especially since numerous—if not the vast majority of—courts in California do not currently provide adequate notice of a person’s right to an ability to pay determination. Inability to pay is a common reason why low-income and</p>	<p>Response: This subdivision is intended to provide procedures for vacating or reducing civil assessments. Allowing proceedings to be stayed based on the filing of a petition to vacate or reduce a civil assessment could be unduly burdensome for courts.</p> <p>Response: The committees decline to expand the rule and provide more guidance on what constitutes good cause. The circumstances listed in the advisory committee comment are examples of what may constitute good cause; good cause is not limited to those examples. The determination of good cause falls within judicial discretion.</p>

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	Commentator	Position		Committee Response
			<p>indigent defendants may miss their court dates or fail to make a payment. If a defendant fails to appear or pay due to inability to pay, it is all the more unlikely that the defendant will be able to make an exorbitant extra payment of \$300, which hurts both the defendant and the court’s efforts to collect debt. Moreover, there are a number of other good reasons that a person might not have been able to appear in court beyond those reasons listed in the advisory comments, including a childcare or transportation emergency or other medical emergency not involving hospitalization.</p> <p>Accordingly, we believe that the rule should specify that good cause exists if the defendant: 1) experiences “homelessness,” defined as lack of a fixed and regular nighttime address, or residence in a shelter or transitional living facility; 2) the defendant does not have the ability to pay; or 3) if the defendant experienced any other unforeseeable circumstance that caused the failure to appear. This subsection should again clarify that the imposition of a civil assessment is not mandatory. The Judicial Council should also require the courts to update their notices and instructions to include the expanded definition of good cause. Finally, the guidelines should be listed in the rule itself, rather than simply in the advisory comments.</p> <p><i>Fifth</i>, it is imperative that there be stronger guidelines informing the exercise of the court’s</p>	<p>Response: The committees decline to provide additional guidelines on whether to impose the</p>

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			<p>discretion in determining whether to impose an assessment and the amount of the assessment. Currently, courts do not generally exercise discretion in levying assessments even though it is provided under statute. Pen. Code § 1214.1. Rule 4.106(c)(5) should <i>require</i> that the court exercise discretion, including considering a defendant’s financial circumstances, if known, and other relevant factors as discussed above, in determining whether to impose an assessment and how much to impose, rather than simply suggesting so.</p> <p><u>Rule 4.106(d) – Procedure for unpaid bail referred to collection as delinquent debt</u></p> <p>Similar to our comments on Rule 4.105, we recommend that Rule 4.106(d)(3) specify that a failure to appear is not in and of itself grounds to presume an unlikelihood of appearing at court and therefore to require bail for trial.</p> <p><u>Rule 4.106(e) – Procedure for failure to pay on an installment plan</u></p> <p>We support rules that stop the all-too-common practice of courts preventing defendants from obtaining judicial review after a failure to pay or after a single payment is missed on a payment plan. To highlight one example of the practice, a member of our coalition recently had a client on public assistance who was diligently paying \$25 a month and forgot to make a payment one</p>	<p>civil assessment. These matters fall within judicial discretion.</p> <p>Response: The committees decline to specify that a failure to appear is not in and of itself grounds to presume an unlikelihood of appearing at court. These matters fall within judicial discretion.</p>

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			<p>month. Although he realized his mistake and sent in double the amount the next month to make up for the missed payment, the court had already tacked on a civil assessment of \$300 and referred him to the DMV for license suspension. The severity of this sanction in relation to the offense of missing one small installment payment is excessive and violates the constitutional prohibitions on excessive fines.</p> <p>Moreover, it is our observation that courts generally do not meaningfully consider a defendant's ability to pay when setting the amounts of installment plans and, as a result, many low income and indigent defendants are left with payment amounts that are simply unaffordable. For these defendants, and particularly defendants on public benefits, even \$20 or \$30 a month can be too high. Furthermore, even if a defendant is able to pay the installments at the time she enters into the plan, her financial circumstances may change during the course of the payment plan. Loss of a job or unexpected medical bills for example, can greatly tax a poor family and make it impossible for a defendant to continue with the same plan. Once a defendant misses an installment payment, courts routinely refer the defendant to the DMV for license suspension for failure to pay, which pushes the defendant into an even more untenable financial situation. It is therefore critical that a defendant have a</p>	



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			<p>chance to present her circumstances and request a reduction in the fine or installment amount.</p> <p>We therefore commend the Committee for proposing Rule 4.106(e)(1), which requires a court to permit a defendant to modify a judgment upon a failure to pay a fine or make a payment under and installment plan. However, as we previously commented, the procedural protections set forth in the rule will be meaningless if the defendant is not notified of their existence. The rule must be amended to specify that after failure to pay a fine or make an installment payment, the court must send a notice to the defendant notifying her of the missed payment and of her options to remedy the problem. The defendant should be given at least 30 days to act on the matter.</p> <p>The rule should also clarify what it means for a defendant to seek a “modification” of a judgment. To modify a judgment should mean to reduce, suspend, or waive the judgment amount; reinstate the payment period; convert any remaining balance to community service; or other disposition that the court, in its discretion, determines appropriate given the defendant’s circumstances. The Committee should amend the rule to include this description.</p> <p>If it is the Committee’s position that those options are not within the definition of “modification,” it should amend the rule to</p>	<p>Response: The committees decline to require courts to send additional notices, beyond those already required by statute and these proposed rules, if a defendant has failed to pay. This would be a substantive change to the proposed rules, and advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal.</p> <p>Response: The committees agree with the recommendation to clarify this issue. The committees have added an advisory committee comment to provide examples of the options available for a court in modifying the payment terms.</p>

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			<p>separately provide the defendant with a range of options to correct a missed payment, including giving the defendant an opportunity to simply make up the missed payment, to petition the court for a new payment plan, to seek a reduction in the total overall payment amount, or to convert any remaining balance to community service or other alternative.</p> <p>It is also critical that a person be given notice and an opportunity to correct the missed payment <i>prior</i> to having a civil assessment or license suspension levied. The rule should be amended to provide that the defendant must be given an opportunity to remedy the missed payment, either by having an opportunity to make up the missed payment, by seeking a modified judgment, or requesting a new payment plan, prior to the court levying a civil assessment or referring the defendant for license suspension. Otherwise a defendant who is willing and able to continue making installment payments will be unjustly and excessively penalized for a failure to make one payment. Subsection (e)(3) should be amended to specify that any license suspension sanction that has been set in motion, be recalled until the defendant receives adequate notice and a meaningful opportunity to be heard. At the very least, Rule 4.106(e) should offer similar protection as the traffic court amnesty repayment plans which require that upon a missed payment the defendant receives a notice</p>	<p>Response: The committees decline to expand the proposal as requested. This comment is beyond the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider these suggestions in developing future proposals.</p>

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			<p>and 30 days to pay or to request a modified payment plan.</p> <p>Finally, Rule 4.106(e)(5), which permits the court to deny a request to modify a judgement if an unreasonable amount of time has passed or the defendant has made an unreasonable number of request to modify, should be stricken. A defendant should never be denied the opportunity to petition to modify or vacate her judgment. Indeed, doing so would contravene Vehicle Code § 42003 and other statutes that permit a defendant to present proof of a change in circumstances at any time. Moreover, if a defendant is in fact unable to pay, it would not make sense to deny a request to modify solely because of the number of times that she has requested a modification or based on some length of time that a court finds “unreasonable.” If a person cannot pay, she cannot pay. We believe that this subsection should be eliminated. In the alternative, we recommend narrowing the instances in which a request can be denied. For example, providing that “the court may only deny the defendant’s request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed <i>and</i> that the defendant had no good cause to delay the request.”</p> <p><u>Rule 4.106(f) – Procedure after a trial by written declaration in absentia for a traffic infraction</u></p>	<p>Response: The committees agree with this suggestion, insofar as it applies to requests to modify the payment terms based on ability to pay under Vehicle Code section 42003. The committees have revised the proposal to clarify that the limitations do not apply if the request to modify is based on ability to pay.</p> <p>Response: The committees decline to eliminate this subdivision as requested. Trials by written declaration under Vehicle Code section 40902</p>

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**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

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			<p>Because a defendant should not have to pay to avail herself of court procedures and doing so violates due process rights, no fee should be required for requesting a trial de novo after a trial in absentia. We request that this section be eliminated.</p> <p><u>Rule 4.106(g) – Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine</u></p> <p>We commend the Committee for acknowledging the critical need for the court to provide notice and a meaningful opportunity to be heard on ability to pay prior to license suspension. As the Committee is aware, we have been advocating for this provision in a number of forums, including in lawsuits against several counties. However, the Committee must expand the rule to include the following.</p> <p><i>First</i>, the rule must specify that a court is also prohibited from referring a person for license suspension of a failure to <i>appear</i> without giving the person notice and an opportunity to be heard on ability to pay, as well as a meaningful opportunity to be heard on the question of willfulness. This is because non-appearance may be due to an individual’s inability to pay, or other excusable factors such never having received notice due to homelessness or other reason.</p>	<p>require the deposit of bail, and the defendant is entitled to a trial de novo. Therefore, this cannot be changed by rule of court; it can only be changed by legislation. The committees intend to clarify with this proposal that, within the current statutory structure, defendants are entitled to a trial de novo after a conviction in absentia under section 40903. Consistent with section 40902, a defendant must deposit bail if he or she requests a trial de novo. The proposed rule provides defendants convicted at a trial in absentia under 40903 with the rights and responsibilities of section 40902.</p> <p>Response: The committees decline to expand subdivision (g) as requested to encompass failures to appear. This subdivision applies to notifications to the DMV under Vehicle Code sections 40509(b) and 40509.5(b), which apply only to failure to pay. Adding provisions addressing procedures for license suspension is beyond the scope of the current proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public</p>

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			<p>comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider addressing procedures for license suspension in the future when a defendant fails to appear.</p> <p>Response: The committees have revised this subdivision to clarify where this notice may appear.</p> <p>Response: The committees have considered the comments in connection with proposed rule 4.335, and have responded accordingly there.</p> <p>Response: The committees decline to revise the language of this subdivision, the purpose of which is to ensure due process is satisfied.</p> <p><i>Second</i>, the rule should make clear that the notice must be <i>adequate</i> and in conformance with the requirements on notice set forth in Rule 4.107 (to the extent the Committee amends Rule 4.107 in accordance with our proposals below). The Advisory comments must specify the same.</p> <p><i>Third</i>, the rule must specify that the ability to pay determination must be made in accordance to the requirements set forth in Rule 4.335 (to the extent the Committee amends Rule 4.335 in accordance with our proposals below).</p> <p><i>Fourth</i>, this subsection should make clear that the court should not notify the DMV unless and until the defendant has been provided adequate notice and a meaningful opportunity to be heard on inability to pay <i>and</i> that the person has nonetheless willfully failed to pay and/or appear, as set forth in Vehicle Code § 40508.</p> <p><b>Proposed Rule 4.107 – Mandatory courtesy notice – traffic procedures</b></p> <p>We are pleased to see that the Committee has</p>

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			<p>enacted Rule 4.107 to address the concerns we have raised about the notice that must be provided to traffic court defendants concerning their right to an ability to pay determination. However, the courts’ notice procedure and the notices themselves need to undergo significant changes in order to constitute adequate notice to defendants about their rights, responsibilities, and options.</p> <p><i>First</i>, we commend the Committee for making it mandatory for courts to send courtesy notices. Rule 4.107(a). It is not reasonable for the initial Notice to Appear to serve as a defendant’s only warning when the citation form is in small print, does not contain the amount of the ticket, does not contain information on an ability to pay determination (though as discussed below, we recommend the Notice to Appear form contain that information) and is often illegible. <i>See</i> Exhibit A (sample traffic citation). However, even if courts are required to send courtesy notices (which we believe that they should), we note that many people never receive the notices mailed by the court. This could be due to a change in address, a defendant not having a stable address, delays in court processing of tickets which results in the court using outdated address information, or other failures in the system. Many of our low-income clients are homeless, move frequently or live in housing with problematic mail delivery, which makes it more likely that they will not receive the</p>	

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			<p>notices.</p> <p>In order to improve the likelihood that a defendant receives the notices from the court, Rule 4.107(a) should be amended to require that the court send courtesy notices not only to the address provided on the notice to appear, but also to the last known address in the DMV database. This way, if a person has updated their address with the DMV after receiving the ticket, the court will send the notice to the proper address. In addition, given the harsh consequences for failure to respond to a ticket, the court should also send the notices certified mail with return receipt requested, so that it is aware when defendants have not received the courtesy notices. It is also imperative the Judicial Council implement an electronic notification system in which the court can send individuals notifications via text message or email. (Additional suggestions for improving the notice process are set forth below).</p> <p><i>Second</i>, although the Committee has provided some guidelines for the minimum information that must be included in the notices—and in particular has specified that the notices must include information on the right to an ability to pay determination, including the availability of installment plans and community service options, Rule 4.107(b)(7)—the guidelines must be more specific about how that information is to be transmitted.</p>	<p>Response: The committees decline to pursue this suggestion. Requiring courts to verify addresses with the DMV and send multiple notices to defendants would be unduly burdensome. Instead, the committees have revised the proposal to provide that the reminder notice is to be sent to the address shown on the <i>Notice to Appear</i>, unless the defendant otherwise notifies the court of a different address.</p> <p>Response: The committees have revised the proposal to clarify that courts may send reminder notices electronically by e-mail or text message. The committees have also added an advisory committee comment to identify several ways a court may obtain the electronic addresses and numbers needed to implement electronic reminder notices.</p>

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			<p>In order to constitute adequate notice, the notification of the defendant’s right to an ability to pay determination should be displayed in clear fashion on the front of the notice, rather than in small print on the back. The notification must include a description of what the ability to pay determination entails, how the defendant may avail herself of the determination, and what relief may be afforded upon a finding of an inability or limited ability to pay, e.g. a reduction or waiver of the ticket amount, placement on a payment plan, or other outcomes. If a defendant is required to provide documentation or other evidence to show inability to pay, that information must be listed clearly on the notice.</p> <p>The information about an ability to pay determination must also be displayed alongside the defendant’s main suite of options to dispose of the ticket. For example, many courtesy notices contain some version of a list of three options in bold print on the front of the notice indicating that the defendant may either 1) forfeit bail 2) enroll in traffic school or 3) plead not guilty. The option to get an ability to pay determination must be provided alongside those options and must be prominently displayed on the front page of the notice, rather than being listed separately or on the back of the notice. Otherwise, the defendant may believe she is limited to those three options and that she can</p>	<p>Response: The committees decline to pursue these suggestions because they are outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider these suggestions if they decide to develop model reminder notices or optional Judicial Council forms as part of future proposals.</p> <p>Please see response above.</p>



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			<p>only request the ability to pay determination if she pleads not guilty to the ticket.</p> <p>The notice should also contain a copy of any form the defendant must fill out in order to get the ability to pay determination. For instance, if the court uses a form that permits a person to show that they receive public benefits, or to list their income and expenses, that form should be included along with the courtesy notice. Our detailed comments on ability to pay determinations are below.</p> <p><i>Third</i>, the Judicial Council must ensure that the notices are readable and understandable for all members of the public. The notices most courts currently send out are written in confusing language, do not contain clear instructions, and contain small print and crowded typeface. In order to constitute adequate notice, the notices must be at a sixth grade reading level and should use short, direct sentences; use simple words that the client can reasonably be expected to understand; avoid multi-syllable words and acronyms as often as possible; avoid compound sentences or combined reasons by breaking them into two sentences; and explain</p>	<p>Response: The committees agree that, to the extent feasible, the notices should provide defendants with information regarding what paperwork must be completed for an ability to pay determination. However, the committees decline to require courts to send forms with the notices, because the benefit of providing the forms would not outweigh the costs to courts. Instead, the committees added an advisory committee comment which provides (1) that electronic reminder notices should provide direct links to any information and forms on the local court website; and (2) that paper reminder notices may include the website addresses for any information and forms on the local court website.</p> <p>Response: The committees decline to pursue these suggestions at this time because they are outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider these suggestions if they decide to develop model reminder notices or optional Judicial Council forms as part of future proposals.</p>

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			<p>complicated ideas. <i>See e.g.</i> California Department of Social Services, All County Information No. 1-02-14, CalWorks Requirements for Adequate Notice, dated Jan. 3, 2014, pg. 3 (setting forth requirements for CalWorks notices based on the 1983 <i>Turner v. McMahon</i> consent decree and so-called “Turner rules”);<sup>3</sup> California Department of Social Services, All County Letter No. 86-57, “Plan for Implementation of <i>Turner v. McMahon</i> Consent Decree Regarding AFDC Notices of Action, dated June 30, 1986;<sup>4</sup> <i>Turner v. Woods</i>, 559 F. Supp. 603 (N.D. Cal. 1982), <i>aff’d sub nom. Turner v. Prod</i>, 707 F.2d 1109 (9th Cir. 1983), <i>rev’d sub nom. Heckler v. Turner</i>, 470 U.S. 184 (1985); Gov. Code § 6219(a) (“Each department, commission, office, or other administrative agency of state government shall write each document that it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style.”).</p> <p>[Footnotes in original] <sup>3</sup> Available at <a href="http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-02_14.pdf">http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-02_14.pdf</a>.  <sup>4</sup> Available at <a href="http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl86/86-57_1.pdf">http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl86/86-57_1.pdf</a>.</p> <p>In order to ensure that non-English speakers receive adequate notice, the courtesy notices must include translations in the defendant’s</p>	<p>Response: The committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. However, the</p>

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			<p>preferred language where available. The information about preferred language could be collected during the citation process, if the defendant chooses to provide it. If the preferred language is not known, the courtesy notice must include a notice of language services and a county contact for translation assistance. <i>See e.g.</i> California Department of Social Services, All County Information No. 1-02-14, CalWorks Requirements for Adequate Notice, dated Jan. 3, 2014, pg. 4 (listing language access requirements for CalWorks notices).</p> <p><i>Finally</i>, inclusion of the information about trial by declaration and telephone scheduling options (optimally, without requiring deposit of “bail”) should be mandatory under 4.107(b), rather than permissive.</p> <p>Proposed Rule 4.107 should be amended to specify that the courtesy notices must conform to the above guidelines and the Judicial Council should design compliant statewide forms for use by all courts.</p> <p><b>Proposed Rule 4.355 – Ability to pay determinations for infraction offenses</b></p>	<p>committees recognize the importance of increasing access to the courts for defendants who do not read or understand English. The committees may consider proposals in the future to address language and access concerns.</p> <p>Response: The committees agree and have revised the proposal to require that the reminder notices inform defendants of information regarding trial by declaration, informal trial (if available), and telephone and website scheduling options (if available). They decline to pursue the suggestion to allow for trial by written declaration without the deposit of bail because bail is statutorily required under Vehicle Code section 40902.</p> <p>Response: The committees decline to pursue the suggestion to develop forms at this time because it is beyond the scope of this proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this</p>

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			<p>We are pleased that the proposed rules mandate ability to pay determinations and begin to set guidelines for determining a defendant’s ability to pay. Ability to pay is a critical issue for traffic court defendants. We agree with the proposal to mandate that instructions and information on ability to pay be provided to all defendants and to permit defendants to make a request for an ability to pay determination in writing or by appearance. We also agree that defendants should be able to request an ability to pay determination at multiple points in the process including at or after adjudication, when a defendant has missed a payment, when an account is delinquent, after the account has been referred to collections and under changed circumstances. It is essential that a missed payment or appearance does not block a defendant from an avenue of relief.</p> <p>We are also pleased that the Committee has proposed initial guidelines for ability to pay by enumerating factors for clerks to consider when making an ability to pay determination, including whether a person receives public benefits or her income is below a certain percentage of the federal poverty guidelines. Providing guidelines that clerks can use to make certain threshold ability to pay determinations should streamline the ability to pay determination and make it more accessible. We also agree that if a defendant disagrees with the ability to pay determination by a clerk or</p>	<p>time with the adoption of the changes that are in the proposal. However, they may develop model or optional Judicial Council forms for civil assessment notices, reminder notices, and ability to pay determinations in the future.</p> <p>Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant’s ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines. The committees may continue to work on developing guidelines that</p>

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			<p>collection agency, she should have the right to judicial review and an appearance. We were encouraged to see that the proposed rule lists alternative options for courts in lieu of payment in full when a defendant does not have the ability to pay.</p> <p>Despite being encouraged by many of the proposals, we do not think the proposed rules go far enough to establish a workable ability to pay process and standard. In order to truly protect defendants’ rights and ensure that the ability to pay determination is meaningful, the ability to pay procedures must be strengthened to include stronger standards and presumptions for determining inability to pay. These standards and the processes for how they will be applied must be transparent and readily available to defendants. Our coalition has spent many hours researching and discussing ability to pay standards and principles. We would welcome the opportunity to work with the Judicial Council to further develop a standard and processes.</p> <p>The following are our proposed principles and guidelines regarding ability to pay determinations:</p> <p><b>1) Ability to Pay Determination</b></p> <p><u>Presumption of Inability to Pay</u> There should be a presumption of inability to</p>	<p>would allow for clerk delegation in considering future proposals.</p> <p>Response: The committees decline to pursue these suggestions because they fall outside the scope of</p>

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			<p>pay for people with income below a certain threshold, including:</p> <ol style="list-style-type: none"> <li>1) People who receive a means-tested public benefit, including SSI, SSP, CalWorks, Tribal TANF, SNAP, county relief, general relief, or general assistance, CAPI, IHSS, Medi-Cal, Refugee Cash Assistance; or Veterans benefits;</li> <li>2) People who have a monthly income below a certain percentage of the federal poverty guidelines (given the multiple levels of federal poverty guidelines used to determine eligibility for various federal means-tested programs for low-income people, we recommend that courts use 250% of the federal poverty rate, as the state uses in determining eligibility for Medi-Cal for working disabled individuals); or</li> <li>3) People who are homeless – defined by a person’s lack of a fixed and regular nighttime address, or residence in a shelter or transitional living facility – or living in a mental health treatment facility or drug treatment facility.</li> </ol> <p>As in the Civil Fee Waiver context, defendants should be able to self-certify that they are not able to pay due to one of the above categories.</p> <p><u>Inability to Pay Determinations Based on Individual Circumstances</u> If a person’s income does not fall into one of the</p>	<p>this proposal. Some would require statutory changes. To the extent that any are within their purview, the committees may take them under consideration in developing future proposals.</p> <p>Response: While an advisory committee comment urges courts to consider whether the defendant receives public benefits and whether the defendant</p>

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			<p>presumed inability to pay categories she should be entitled to an inability to pay determination based on her individual circumstances. This determination should take into account various factors including income, expenses, debt (including court debt), dependents and other financial obligations. We are currently researching which factors would most accurately and fairly reflect a defendant’s ability to pay and would welcome the opportunity to share our findings.</p> <p><b>2) Standards for reducing and waiving fees, payment plans and alternatives to payment</b></p> <p>The proposed Judicial Council rule provides that based on the ability to pay determination, the court <i>may exercise its discretion</i> to provide for payment by installment plan, conversion to community service, suspend the fine or offer an alternative. Provision of these alternatives should not be discretionary. There must be strong and transparent guidelines for the relief available to a defendant who is unable to pay or has a limited ability to pay. Unless the court is <i>required</i> to employ these guidelines or offer these options, the inability to pay determination will not be meaningfully implemented, particularly given that there are rarely attorneys in traffic court to raise these issues.</p> <p>There should be a standardized process for determining the amount that someone will pay</p>	<p>has a monthly income of 125 percent or less of the current poverty guidelines in determining ability to pay, this proposal preserves judicial discretion. In adjudicating each request on a case-by-case basis, courts may take into account any variety of factors impacting that particular defendant’s ability to pay.</p> <p>Response: We have not identified any authority requiring courts to offer installment payment plans or community service. In addition, this proposal is not intended to limit judicial discretion. In reviewing a request for an ability to pay determination, a court has the discretion to fashion a response that is tailored to the situation of the individual defendant and the resources available.</p> <p>Response: This suggestion is outside the scope of the present proposal. The committees may</p>

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			<p>so that it is fair and transparent. We are working on developing a calculator that could be used to determine the amount a person could be required to pay after taking into account various factors including income, debt, dependents and cost of living, and would invite the Judicial Council to work with us on this effort.</p> <p><u>Payment Plans</u></p> <p>If a defendant meets the presumption for inability to pay, there should be a presumed suspended fine or \$0 payment plan. Similar presumptions, resulting in \$0 or suspended payments, are currently employed in California child support cases, welfare overpayment cases, wage garnishment, and federal student loan repayment. Some California traffic court judges already use their discretion to suspend fines and fees. The Judicial Council should adopt this presumption to create statewide consistency.</p> <p>Additionally, for people whose income is higher than the presumption, or who have some ability to pay, any alternative to monetary payment should be reasonable (see community service discussion below). In no case should a payment plan be an excuse to avoid reducing a defendant's fine. When a ticket amount is high and someone has limited or no means to pay, simply putting someone on an installment plan for the entire amount is not a sustainable solution. Therefore, the installment plan should</p>	<p>consider developing ability-to-pay calculators or other tools in developing future proposals.</p> <p>Response: The committees decline to pursue these suggestions as they are outside the scope of the present proposal. In addition, this proposal is not intended to limit judicial discretion. In reviewing a request for an ability-to-pay determination, a court has the discretion to fashion a response that is tailored to the circumstances of the individual defendant. Moreover, while a court may suspend the base fine in whole or in part, discretion to lower or eliminate fees is limited by statute.</p> <p>Please see response above.</p>



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			<p>only be calculated after the total amount of the fine is reduced or waived based on a person's financial circumstances.</p> <p>One possible formula is: (1) the court determines how much a defendant is able to pay each month; and (2) the remaining fines and fees are waived after twelve months of payments at that rate. This cuts down on the court cost of administering lengthy payment plans and creates some equity. For example, if the court determines a defendant could pay \$10 a month, any amount above \$120 (12 x 10) should be waived. To avoid undue administrative and practical burdens, defendants should be allowed to pay the entire amount in any number of payments necessary to satisfy their obligation within twelve months (<i>i.e.</i>, if a person receives enough money to pay the total remaining 12 month amount during the second month she could pay it and the balance would be waived). There should be no sanctions levied for a failure to make one payment. Importantly, defendants should not be required to pay an additional fee to get on an installment plan.</p> <p><u>Community service</u></p> <p>Although reasonable alternatives to payment must be provided to traffic court defendants, requiring low-income people and people of color to labor in order to work off infraction fines, reinforces historical problems around</p>	<p>Please see response above.</p>

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			<p>forced labor for the state. The Judicial Council must implement guidelines around community service that protect defendants’ rights and ensure that completion of community service is feasible given defendants’ circumstances. The below are our recommendations.</p> <p><i>First</i>, any alternative, including community service, must be subject to a similar reasonableness determination as applied to a defendant’s ability to pay. The court must provide a number of alternatives that take into account individuals’ life circumstances, including employment and family obligations, and must include options for people with physical or mental disabilities. If a defendant meets the presumption of inability to pay as outlined above, the person should be waived from any community service requirement.</p> <p>For defendants with conflicting obligations, particularly employment or with other life stressors due to poverty, flexibility should be the guiding principle. Low-income people have multiple stressors in their lives, many of which are related to their very survival, and court action should not exacerbate these stressors. Weekend or evening community service should be possible and defendants should be encouraged and enabled to propose their own community service sites. For instance, one of our clients was able to do his community service at his local church; another at a</p>	<p>Response: The committees decline to pursue these suggestions because they are outside the scope of the present proposal. This proposal is not intended to limit judicial discretion. In reviewing a request for an ability-to-pay determination, a court has the discretion to fashion a response that is tailored to the circumstances of the individual defendant.</p> <p>Please see response above.</p>

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			<p>community-based non-profit. Such flexibility strengthens community ties and stabilizes individuals' lives. Community service credit should also be available for hours spent in job training, drug or mental health treatment, education, securing or providing child care, or participating in other approved public interest or personal improvement activities.</p> <p>Courts should also allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations. <i>See e.g.</i> U.S. Department of Justice "Dear Colleague" letter, dated Mar. 14, 2016 ("With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations.").<sup>5</sup> Defendants who demonstrate good cause to waive community service should be eligible to have their community service obligation waived. Good cause can mean a disability, a defendant's (or his dependent's) physical or mental illness, lack of proper transportation, lack of adequate childcare, or other circumstances that would prevent someone from completing their community service.</p> <p>[Footnote in original]<sup>5</sup> Available at: <a href="https://www.justice.gov/crt/file/832461/downlo">https://www.justice.gov/crt/file/832461/downlo</a></p>	<p>Please see response above.</p>

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			<p>ad.</p> <p><i>Second</i>, the community service plan should only be considered after appropriate fine and fee waivers and reductions have been considered. It would be counter-intuitive to develop procedures to reduce the financial burden on low-income defendants yet require them, should they opt for community service, to “work off” the entire amount of unadjusted fines and fees. Furthermore, neither community service programs nor payment plans should become a means to impose greater penalties on the poor by, for example, imposing user fees or interest to participate in these alternatives. <i>See e.g.</i> U.S. Department of Justice “Dear Colleague” Letter, dated Mar. 14, 2016.</p> <p><i>Third</i>, setting an hourly rate, even if minimum wage or more, creates the risk that people with large amounts of outstanding debt will be bound to work without pay for an unreasonable amount of time. If an hourly rate is set, it should be at least set at the minimum wage in the local city or county, there should be limits on the number of hours required per month, and after a certain number of months, the remaining balance should be forgiven.</p> <p><u>Additional comments on Rule 4.335</u></p> <p>The rule’s provision that permit a court to deny a request to modify a judgement if an</p>	<p>Please see response above.</p> <p>Response: The committees decline to pursue this suggestion because it is outside the scope of the present proposal. It would also appear to require amending Penal Code section 1209.5, which provides that infraction defendants must perform community service at the hourly rate applicable to community service work performed by criminal defendants. The committees may consider developing legislative proposals in the future.</p> <p>Response: The committees agree with this suggestion and have removed this proposed</p>

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	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
			<p>unreasonable amount of time has passed or the defendant has made an unreasonable number of request to modify, should be stricken, for the reasons cited in the comments on 4.106(e)(5).</p> <p>Finally, the proposed rule should specify that the court’s ability to suspend the “fine,” applies to base fines, fees, assessments and other penalties. 4.335(c)(6).</p>	<p>subdivision from the proposal.</p> <p>Response: The committees decline to pursue this suggestion. The court has discretion to lower the base fine to \$0. Because penalty assessments are calculated based on the base fine, lowering the base fine will automatically reduce any penalty assessments. However, the court does not have discretion to alter mandatory fees imposed by statute.</p>
2.	<p>Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary Cochair</p> <p>Hon. Laurie D. Zelon Cochair</p>	A	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. PAF understands that there are complicated and intersecting issues involving California’s fines and fees, low-income families, and communities of color. Many of the people coming into traffic court do not have attorneys and it can be difficult for them to understand and move through the traffic court process.</p> <p>PAF has been collaborating with the Traffic and Criminal Law Advisory Committees on strategies to improve access <i>and</i> fairness for Californians in traffic court. PAF provided input during the development of proposal number SP16-08 and is supportive of that proposal.</p>	<p>The committees appreciates the input provided by the Advisory Committee on Providing Access and Fairness.</p>

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	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
			SP16-09 and SP16-10 take additional, important steps toward improving access <i>and</i> fairness for traffic court litigants. PAF looks forward to continued collaboration with the Traffic and Criminal Law Advisory Committees.	
3.	California Commission on Access to Justice State Bar of California By Hon. Mark A. Juhas Chair	N/I	<p>The California Commission on Access<sup>1</sup> to Justice is grateful for the invitation to comment on your Committee’s Traffic Proposals, which might help increase fairness to low and moderate income Californians.</p> <p>[Footnote in original] <sup>1</sup> The Commission includes appointees from the California Governor, the Attorney General, the President pro Tem of the State Senate, the Speaker of the California Assembly, the California Supreme Court, the California Judicial Council, California Judges Association, the State Bar of California, Consumer Attorneys of California, California Chamber of Commerce, California Labor Federation, League of Women Voters, the California Council of Churches, the Council of California County Law Librarians, and the Legal Aid Association of California.</p> <p>The Access Commission was established twenty years ago to improve access to civil justice for Californians living on low and moderate incomes, so the Commission is very concerned about rules that have harsh impacts on those</p>	The committees appreciate the input provided by the California Commission on Access to Justice.

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			<p>who are without the means to avoid those consequences. We are gratified to see that your proposals both acknowledge and ameliorate the impact of current rules on the substantial number of Californians who are unable to pay several hundred dollars while maintaining their housing and sustaining household costs. We submit the following comments on the Proposals:</p> <p><b>SP16-08 Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notices; and Ability to Pay Determinations</b></p> <p>The Access Commission supports the intent of this proposal, because the implementation will increase procedural fairness, better inform those who are cited, minimize the need to go to court, and make ability-to-pay determinations fair.</p> <p><b>Amendment to rule 4.105</b> We support the requirement that local courts link to the statewide self-help traffic site. We recommend that the local court links make clear that the site is available in Spanish, in addition to English.</p> <p><b>Proposed rule 4.106</b> The Access Commission supports the notice, information, and standardization that the rule provides for, because it will help Californians not to amass debts that they are unable to pay. We</p>	<p>Response: The committees decline to pursue the commission’s suggestion because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts, and may consider this recommendation in the future.</p> <p>Response: The committees decline to pursue the commission’s suggestion at this time because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts, and</p>

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			<p>recommend that court notices be translated into the most common languages besides English that are used in the issuing county, or at least that there be information on the notices that refers to multilingual phone numbers or websites that can translate the notice.</p> <p><b>Proposed rule 4.107</b> We are delighted to support mandatory “courtesy notices”, because they will provide people with the information that they need to appear in court or to resolve their citations. We recommend that the warnings about failure to appear be translated into the most common languages in the county.</p> <p><b>Proposed rule 4.335</b> The Access Commission heartily supports the improvement and standardization of ability-to-pay determinations. Notifying those who receive citations of their right to request these determinations will result in more paid fines and fewer harsh consequences for low income Californians. We recommend that the notifications be translated into the most common languages in the county.</p>	<p>may consider this recommendation in the future.</p> <p>Please see response above.</p> <p>Please see the response above.</p>
4.	Hon. Christine Copeland Commissioner Superior Court of California, Santa Clara County	AM	A few questions, really. No doubt this will cost courts money to implement, as more court time will be expended dealing with ability to pay (ATP) hearings, even if they happen via writing. Our court in particular has about a \$5 million deficit and we are short-staffed as it is, so the timing is bad. I think giving courts 2 months implementation time is not enough time, since	The committees appreciate the commissioner’s input.



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			<p>most of us are on tight budgets and are short-staffed these days. I think the only fair way to do ATP hearings would be on separate calendars (to have ATP hearings as part of an arraignment or trial calendar will make the work of the traffic judge or commissioner very difficult), and new calendars require more staff time.</p> <p>Whether the court considers a written application or has a court hearing on ATP, shouldn't these be treated as confidential applications or hearings, as we do for fee waiver hearings? Applications in writing should be kept confidential, and hearings should be closed-door.</p> <p>Litigants requesting an ATP hearing or submitting an application in writing should have</p>	<p>Response: Court records and proceedings are open to the public, unless made confidential by law or sealed by court order. (See <i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> (1999) 20 Cal.4th 1178 [recognizing a constitutional right of access to criminal cases]; Cal. Rules of Court, rule 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open"].) Vehicle Code section 42003 does not make ability-to-pay determinations confidential. Providing for confidentiality by rule is outside the scope of the present proposal. Under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider this suggestion in developing future proposals.</p> <p>Response: The committees have revised the proposal to specify that the request for an ability-</p>

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			<p>to submit some form, signed under penalty of perjury, that is like a fee waiver application or a financial statement (civil form), AND attach proof of income. Otherwise, the process, and any orders discounting fines/fees, will at least appear, if not be, arbitrary.</p> <p>While I appreciate and understand the spirit of the proposals, I think bottom line the emphasis is mis-placed: fines and fees are too high, and the \$300 ceiling allowed for a civil assessment under PC1214.1 needs to be lowered. Also, in my experience, many defendants default on “expensive” violations, like insurance and registration issues. If they had sufficient funds to begin with, they likely would've renewed their registration and /or obtained insurance. There's nothing we can do about insurance rates, but it shouldn't go unmentioned that state vehicle registration rates are quite high. It feels like the courts burn a lot of time and money trying to collect fines and fees that are perhaps too high or disproportionate to the “crime” to begin with, and now with these proposals, we</p>	<p>to-pay determination must include any information or documentation the defendant wishes the court to consider. Otherwise, the committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. The committees may consider developing forms in the future.</p> <p>Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.</p>

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			<p>are going to have to spend more time and money to consider discounting already-adjudicated matters. It would be more cost-effective to re-examine what rules and procedures exist which might create undue debt burdens on drivers. Perhaps all the add-ons to base fines, including the penalty assessments, should be overhauled.</p> <p>Lastly, and on a completely different tangent, re: ATP issues, some drivers have decreased ability to pay simply because they have repeat and successive violations (i.e. multiple citations for driving on a suspended license, for having lapsed registration and/or no insurance). Of course the more tickets a driver racks up will no doubt adversely effect that driver's ability to pay, so discounting fees and fines feels a bit undeserved in that context. Again, I reiterate my comments above re: wouldn't it just be more cost-effective and sensible to lower CA-FTA rates and lower traffic fines/fees and maybe even car registration rates altogether?</p>	Please see the response above.
5.	Albert De La Isla Principal Administrative Analyst West Justice Center Superior Court of California, Orange County	N/I	[Proposed rule 4.106(e)(1): "When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the judgment, or the defendant may request or the court may direct a court appearance."]	The committees appreciate Mr. De La Isla's input.

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			<p>This needs to be reworded as it should not state that they can modify the judgement by written petition, but they can seek relief to modify the terms of payment. Leaving it to say modify the judgement leads them to believe that findings of guilty and sentences imposed are not final.</p> <p>[Proposed rule 4.106(e)(5)(A): “An unreasonable amount of time has passed, or”]</p> <p>Need standards / guidelines on what is considered an unreasonable amount of time. Is it more than 30/ 60 days from the failure to pay? I would recommend 30.</p> <p>[Proposed rule 4.106(e)(5)(B): “The defendant has made an unreasonable number of requests to modify the judgment.”]</p> <p>Same here, what is to be considered unreasonable?</p> <p>[Proposed rule 4.106(g): “Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay.”]</p> <p>If we include this notice on the non compliance notice sent out advising them of the impending</p> <p>Response: There were several comments expressing concerns about the phrase “modify or vacate the judgment.” The committees have revised the rule to state “modify the payment terms” to address these concerns.</p> <p>Response: The committees decline to limit judicial discretion by assigning a time limit.</p> <p>Response: The committee declines to limit judicial discretion by assigning a number.</p> <p>Response: Several commenters requested clarification regarding notice of and opportunity</p>

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			<p>civil assessment, how long does the court need to wait to give them the opportunity to be heard on their inability to pay? Is it the same 20 days? Need clarity as to when, after notice as described above, can the hold go out.</p> <p>[Advisory committee comment to rule 4.106(a): “The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear citation and been released for a signed promise to appear, and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required.”]</p> <p>Since it is based on receiving a written notice to appear and released with a sign promise to appear, please confirm that this rule’s intent is to exclude accident, owners and red light citations which do not have a signed promise to appear.</p> <p>[Proposed rule 4.107(a): “Each court must send a mandatory ‘courtesy notice’ to the address shown on the Notice to Appear or to the defendant’s last known address before the initial appearance.”]</p> <p>If this is now to be mandated, should eliminate reference to a courtesy notice as it would no longer be a courtesy. In Orange County, we use</p>	<p>to be heard on the ability to pay. The committees have revised the proposed rule to clarify that this notice may be provided on the reminder notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant. As long as it complies with due process, twenty days should be sufficient.</p> <p>Response: Several commenters expressed concerns about this advisory committee comment. The committees have deleted the language “and been released for a signed promise to appear.” The proposed rule is not intended to exclude red light citations.</p> <p>Response: The committees agree and have changed the name to “reminder notice.”</p>

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			<p>Violation Information Notice.</p> <p>Also, since it is now mandatory, we need rules for processing of notices if the address comes back undeliverable, no forwarding address etc... so that it is clear service was attempted and not successful for purposes of the court record.</p> <p>[Proposed rule 4.335(c)(4): “The court may delegate to a clerk or other county revenue collections agency the initial determination of the defendant’s ability to pay a court-ordered fine using the following criteria:”]</p> <p>This should not be delegated to a clerk or collection agency, this should remain a judicial determination.</p> <p>[Proposed rule 4.335(c)(7): “A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time before the final payment date or the completion date.”]</p> <p>There should be a time line for this hearing within XX number of days from the failure to pay.</p>	<p>Response: The committees have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear. While the court must send the notice, no consequences would attach if the notice were returned as undeliverable. Accordingly, courts would not need to track notices that were returned as undeliverable.</p> <p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.</p> <p>Response: This provision clarifies that the ability-to-pay provisions apply to installment plans and community service during the pendency of the judgment. It is modeled on Vehicle Code section</p>

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			<p>Suggest 30 days.</p> <p>[Proposed rule 4.335(c)(9)(A): “An unreasonable amount of time has passed; or”]</p> <p>It would benefit the court to have a time line, suggest 30 days from the failure to pay.</p> <p>[Proposed rule 4.107(c)(9)(B): “The defendant has made an unreasonable number of requests for an ability-to-pay determination.”]</p> <p>Unreasonable number without a change in circumstances correct? If the defendant can show the change, then we should accept the request for the determination.</p>	<p>42003, which does not contemplate any time restrictions while the judgment remains pending on making this request.</p> <p>Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability to pay determination while the judgment remains pending, the committees have removed this provision from the proposal.</p> <p>Please see the response above.</p>
6.	Robert M. Hertzberg Senator, 18 <sup>th</sup> Senate District	N/I	<p>I appreciate the opportunity to comment on the proposed rules related to traffic criminal procedures, notices, and fees. It is encouraging to see continued work by Judicial Council to make rules of the court easier for individuals to seek remedies and to make amends for vehicle violations.</p> <p>I reviewed the three traffic proposals, and generally appreciate the clarity of notices, timeliness, standardization, and attempts to move certain actions online. It is a great frustration that county courts have different rules and forms, not to mention the near-total</p>	The committees appreciate Senator Hertzberg’s input.

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			<p>lack of online uniformity and access to county courts. These proposals will make it clearer to all Californians what their rights are and how to seek fee waivers or ability to pay determinations and will take a modest, but important, step toward modernizing the courts.</p> <p>These proposals will hopefully reduce the crushing burden of fines and fees for low income individuals by facilitating ability to pay determinations and fee waivers. The modest online tool for requesting a payment plan should be mandatory, not optional, for each of the 58 courts. These are important, if small, steps in the right direction.</p> <p>Unfortunately, the proposals do nothing to eliminate the widespread use – and abuse – of the license suspensions to collect-court ordered debt. The United States Department of Justice indicated last year that this practice is of questionable constitutionality. Years ago, license suspensions may have seemed like a useful tool for collection court-ordered debt, but now we know the negative impact it has on millions of Californians.</p> <p>The fact is, a suspended license means lost income, lost employment, and generally increases the burden of poverty. It’s much harder to get childcare, education, and work without transportation. And state data shows that the tool unfairly burdens communities of</p>	<p>Response: This suggestion is directed at the forms proposal (<a href="#">SP16-09</a>) that the Traffic Advisory Committee is concurrently presenting to the Judicial Council. The Traffic Advisory Committee has provided a response to this comment in the comment chart attached to that proposal.</p> <p>Response: This proposal would ensure that defendants are afforded due process (notice and the opportunity to be heard on ability to pay) before a driver’s license may be suspended.</p>



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			<p>poverty and color.</p> <p>This is an issue about which I am passionate. I have carried several pieces of legislation over last two years addressing injustice. And until we start using better, fairer, punishments that more closely fit the nature of these crimes (i.e., minor traffic offenses), we will not have the fair justice system that Californians deserve.</p>	
7.	Legal Aid Foundation of Los Angeles By Yolanda C. Arias Managing Attorney	N/I	<p>The Legal Aid Foundation of Los Angeles is a frontline nonprofit law firm that provides civil legal aid to low-income people in Los Angeles County. As a part of our commitment to serving low income communities, we currently advocate for clients in traffic court proceedings and assist them with reinstating their driver's licenses. We provide these services with the aim of reducing the financial burden excessive traffic court fines and fees impose on our client's lives and eliminating the barriers to employment created by driver's license suspensions. We have seen firsthand the devastating effects a driver's license suspension can have on someone's life. For example, a driver's license suspension can lead to loss of employment or housing, difficulty transporting children to school, difficulty transporting oneself or loved ones to medical appointments, impoundment of one's vehicle, and can even lead to an arrest and incarceration for driving on a suspended license.</p>	<p>The committees appreciate the input of the Legal Aid Foundation of Los Angeles.</p>

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			<p>We applaud the efforts of the Judicial Council to increase procedural fairness within the traffic court system. In particular, we applaud those efforts addressing the problematic practice of using driver’s license suspensions as a means to collect unpaid traffic court fines and fees from people who cannot afford to pay them. However, despite our support for the reforms being made, we do have concerns regarding certain aspects of the proposed rules, and have provided comment on them as follows:</p> <p><b>I. SP16-08, Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, Fees, and Assessment; Mandatory Courtesy Notices; and Ability to Pay Determinations</b></p> <p><b>A. Proposed Changes to Rule 4.105</b></p> <p><b>The self-help portal should include more comprehensive and robust information to ensure self-represented litigants are adequately equipped.</b></p> <p>We appreciate the Judicial Council’s efforts to make the traffic citation process easier to understand. We think the self-help portal would be even more helpful to the public if it included more robust information about how to contest a citation and the potential consequences of a citation. For example, the Council could include</p>	<p>Response: Information contained on the Judicial Council’s website is outside of the scope of the rules proposal. However, the committees may consider some of these suggestions to update website content in the future.</p>

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			<p>an easy-to-follow interactive guide to navigating the traffic court system, including possible grounds for dismissal.</p> <p>With reference to the proposed language of Rule 4.105, under subsection (c) <b>Deposit of Bail</b>, subsection (2) states: Court may require the deposit of bail when the defendant <i>does not sign</i> a written promise to appear as required by court. Could application of this subsection be used when the defendant refuses to sign a written promise to appear as opposed to a non-willful failure to sign the written promise to appear? Are there circumstances where signing a written promise to appear was outside the control of the defendant where the requirement to deposit bail would be unjustified?</p> <p>With reference to the Notice referred to in proposed Rule 4.105 (d), defendants should have meaningful language access to information regarding the ability to make an appearance without the deposit of bail in infraction cases. Please see our comment on language access for Limited English Proficient individuals on page 4.</p> <p><b>B. Proposed Changes to Rule 4.106</b></p> <p><b>The Judicial Council should create a uniform form for vacating civil assessments.</b></p> <p>As the Judicial Council is aware, there is no</p>	<p>Response: This proposal would not amend subdivision (c) of rule 4.105, which has been in effect since June 8, 2015. Subdivision (c) allows a court to exercise its discretion to require the deposit of bail when the defendant does not sign a written promise to appear as required by the court. These matters fall within judicial discretion, and the committees decline to limit discretion.</p> <p>Response: The committees decline to pursue this suggestion because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts. The committees may consider this recommendation in the future.</p> <p>Response: This suggestion is outside the scope of the current rules proposal. Advisory bodies cannot present a proposed new form to the Judicial Council for adoption without first circulating for</p>

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			<p>uniformity in how civil assessments are imposed or vacated, so we encourage the Judicial Council to create a form that may be used to request vacating of a civil assessment anywhere in the state and to make the form available online.</p> <p><b>The Judicial Council should provide more guidance about the definition of “good cause” for failure to appear, when a defendant is unlikely to appear as ordered without a deposit of bail, and when an “unreasonable” amount of time has passed after failure to pay an installment.</b></p> <p>We are heartened by the Judicial Council’s expansion of circumstances that could constitute good cause for a failure to appear, and we appreciate that the rule encourages the court to exercise its discretion to determine whether the civil assessment should be imposed at all, taking into account the individual’s financial circumstances. Many of our clients have difficulties getting to court because of circumstances that are beyond their control, and we think it would be useful to include “lack of child care” and “inflexible work schedule” in the factors that constitute good cause for failure to appear.</p> <p>Similarly, given the wide variation in court procedures across the state, we believe it would</p>	<p>public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may develop model civil assessment notices or optional Judicial Council forms in the future.</p> <p>Response: The committees decline to provide more guidance on these terms. The court retains discretion to determine whether these circumstances amount to good cause based on its review of the facts presented in the case on review.</p> <p>Response: The committees decline to revise the proposal to specify factors the court may consider</p>

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			<p>be wise for the Judicial Council to include factors that the court may consider in determining that a defendant is unlikely to appear as ordered without a deposit of bail, such as a previous failure to appear on the same case. Further, if the court has determined that the defendant is not likely to appear, the court should consider the defendant's ability to pay when ordering him or her to pay. We also encourage the Judicial Council to provide more guidance as to when an unreasonable" amount of time has passed after failure to pay an installment and a court may deny a request to modify the judgment. We are concerned that the language will be interpreted in an overly restrictive manner, and many of our clients will be unable to modify their judgments, rendering this rule ineffective.</p> <p><b>The Judicial Council should not limit the amount of time that someone can move to vacate their civil assessment.</b></p> <p>Finally, P.C. 1214.1 states that the court may impose a civil assessment against a defendant who fails to appear without good cause. Therefore, a defendant may move to vacate the assessment at any time by showing that he/she had good cause for the failure to appear.</p> <p><b>C. Proposed Changes to Rule 4.335</b></p> <p><b>In order to promote uniformity and access to</b></p>	<p>in determining whether a defendant is unlikely to appear as ordered without a deposit of bail. These matters fall within judicial discretion.</p> <p>Response: Penal Code section 1214.1 provides (1) that the assessment must not become effective until at least 20 days after the mailing of the notice and (2) that if the defendant appears within the time specified in the notice and shows good cause, the court must vacate the assessment. It appears a legislative change would be necessary to allow a defendant to move to vacate the assessment at any time.</p>

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			<p><b>ability to pay determinations, we recommend that the Judicial Council create a form for ability to pay determination requests.</b></p> <p>Like many other organizations, we have seen the impact a single citation can have on an individual’s financial stability when courts refuse to consider an individual’s ability to pay. We have also seen the devastating impact a suspended license has on an individual’s ability to seek and maintain employment. Therefore, we appreciate that the Judicial Council is addressing this pressing issue by requiring courts to consider defendants’ ability to pay citation fines and fees. Again, because of the wide variation in court procedures across the state, we urge the Judicial Council to create a readily available form with which defendants may request an ability-to-pay determination so that it is clear what information is pertinent to the determination. Individuals appearing in court should be allowed to request an ability to pay determination in person without submitting the form. In addition, for those courts that allow hearings to be scheduled and payments to be made online, we believe the Judicial Council should require them to offer individuals the ability to request an ability-to-pay determination online.</p> <p><b>The Judicial Council should provide more guidance to courts about what an ability to pay determination must consider.</b></p>	<p>Response: The committees appreciate the suggestion and are contemplating developing model or optional Judicial Council forms related to ability to pay.</p>

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			<p>In order for this rule to have an actual impact on the courts, the Judicial Council must give more guidance as to what remedies a court should offer depending on the individual’s circumstances. For example, if a person’s sole income is \$221 from General Relief, the court should suspend the fine in whole.</p> <p><b>The Judicial Council should provide more guidance on what an “unreasonable” amount of time is to request an ability to pay determination.</b></p> <p>We are concerned about the council's proposal that a court may deny an ability to pay determination if “an unreasonable amount of time has passed.” In our experience, many of our clients did not appear in court because they knew it was impossible to pay the full amount of the fine, and they did not know they had a right to an ability to pay determination. Consequently, they have citations dating back many years. We ask that the Council provide more guidance on what an “unreasonable” amount of time is, and start the clock from the date these rules go into effect.</p> <p><b>An offer of community service should not be substituted for an ability to pay determination.</b></p> <p>Many courts have ordered our indigent clients to</p> <p>Response: The committees decline to pursue this suggestion at this time because it is outside the scope of the present proposal. As noted above, under rule 10.22, advisory bodies cannot present a substantive rule change to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. However, the committees may consider this in developing future proposals.</p> <p>Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination during the pendency of the judgment, and this rule is modeled on Vehicle Code section 42003, the committees have removed this provision from the proposal.</p>

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			<p>complete community service instead of conducting a meaningful ability to pay determination. Because of the way the community service program is operated in Los Angeles County, it is often difficult for our clients to complete the community service as ordered. Community service hours are currently converted at minimum wage, so if the defendant has a very large fine or multiple citations, he or she can be ordered to complete hundreds of hours of community service within a few months, without extensions. Many of our clients have demanding schedules, due to work, school, taking care of children, looking for employment, or caring for ill relatives, and completing the hours within such short amount of time can be nearly impossible. We are concerned that community service will be used as a replacement for judicial discretion to consider ability to pay. We recommend that the Judicial Council’s rules advise Courts to first consider ability to pay, reduce or waive fees accordingly, and then offer individuals the chance to convert any remaining fines and fees into community service or jail time.</p> <p>In addition, we believe the Judicial Council should recommend that courts consider the fees imposed on individuals who choose community service when making ability-to-pay determinations. In many courthouses in Los Angeles, individuals must pay at least \$40 up front to sign up for community service, and the</p>	<p>Response: The committees decline to pursue this suggestion because this rules proposal is not intended to limit judicial discretion. It is up to the court to determine whether to offer community service based on its assessment of the defendant’s ability to pay.</p>



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			<p>fees can be much higher if they are ordered to complete many hours of community service. This can make the community service option difficult to access for many of our clients. We ask that the Council either eliminate the use of community service fees or require judges to consider the fees involved when imposing community service sentences.</p> <p><b>Notices of the right to request an ability-to-pay determination and instructions must be accessible to Limited English Proficient individuals</b></p> <p>Proposed rule 4.335 states that the Court must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination. In Los Angeles County alone, 57% of county residents speak a language other than English and 27% of that number report that they speak English less than well.<sup>1</sup> For this population to have meaningful access to ability-to-pay determinations, both the notice itself and the instructions should be in the threshold languages spoken by the population in the court's service area. A tag line on the notice in various threshold languages directing defendants to a website where the notice and instructions are translated into their languages would be one way of ensuring meaningful language access.</p>

Response: The committees decline to pursue this suggestion because it is outside the scope of the present proposal.

Response: The committees decline to pursue the commission's suggestion at this time because it is beyond the scope of the present proposal. However, the committees recognize that language access is an important issue facing the courts and may consider this recommendation in the future.

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			<p>[Footnote in original] <sup>1</sup> Los Angeles Superior Court LEP Plan 2016, page 1.</p> <p><b>Courts should avoid conflicts of interest and not delegate the initial determination of the defendant's ability to pay to county revenue collection agencies.</b></p> <p>Most collection agencies that contract with courts to collect fines, fees, etc., have a financial disincentive to determine that defendants have an inability to pay. Because of this conflict of interest, the Judicial Council should not recommend that Courts delegate this responsibility to collection agencies. Should the Judicial Council proceed with making this recommendation, we would suggest that an appeal process with proper notice be instituted so that defendants could challenge the determination made by either a clerk or county revenue collection agency.</p>	<p>Response: As discussed in other responses above, the committees have decided to remove the provision allowing for delegation to a county revenue collections agency from the proposal because of apparent confusion over the scope of the intended delegation.</p>
8.	Hon. Christopher Martin Commissioner Superior Court of California, Monterey County	N/I	<p><b>Amended rule 4.105</b></p> <p><b>Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to secure a court appearance at either arraignment or trial unless a specified exception applies. Under the rule, courts may require infraction defendants to deposit bail before a first appearance only in the following circumstances: (1) the defendant elects a statutory procedure (such as trial by</b></p>	

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			<p><b>written declaration) that requires the deposit of bail; (2) the defendant at arraignment refuses to sign a written promise to appear for future court proceedings; or (3) the court determines that the particular defendant is unlikely to appear as ordered without a deposit of bail and states its reasons for that finding.</b></p> <p>Only question here is whether we now will be providing promise to appear documents to the defendant at arraignment in lieu of just ordering them back (apparently for further arraignment or trial). The verbal order to appear is on the orally recorded record. It is a court order to appear, orally communicated to a defendant who is present in court and as such should be sufficient without a signed promise to appear as well. Impact: A promise to appear is one more document to print (possibly in duplicate or triplicate) and store, one more to translate into other languages or to take the time for an interpreter to read to defendant (, one more procedure for the court to outline to the defendant at arraignment, one more procedure/distraction for the bailiff to have to deal with and yet another document to scan for our “paperless” experience. (Query: If defendant refuses to sign a promise to appear how likely is it they will go and post bail as well?)</p> <p>New Rule 4.106</p>	<p>Response: This proposal would not amend subdivision (c) of rule 4.105, which has been in effect since June 8, 2015. Subdivision (c) explains when courts may require bail for the defendant to appear at arraignment or trial.</p>

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			<p><b>When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment.</b></p> <p><b>~ When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate the civil assessment because the defendant had good cause for failing to appear or pay. <i>Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.</i> [Emphasis added.]</b></p> <p>Courts should generally be on the same page as to what comprises good cause in these cases and I understand it varies widely among courts. Query whether we can circumscribe the boundaries of good cause if the defendant has legal redress under these new proposed rules , and whether these proposed rules expand the previous redress under P.C. 1214.1(d): “The assessment imposed under subdivision (a) shall be subject to the due process requirements governing defense and collection of civil money judgments generally.” The last sentence of the proposed rule tends to vitiate the good cause</p>	<p>Response: This proposed rule provides procedures for implementing Penal Code section 1214.1, which provides both that courts must vacate a civil assessment based on a showing of good cause and that courts have discretion to decide whether to impose a civil assessment and, if so, in what amount. The committees believe that the current language is sufficient.</p>

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			<p>requirement and opens up a wide avenue for subsequent assertion of “abuse of discretion.”</p> <p><b>New Rule 4.106 (cont’d)</b></p> <p><b>When a court has entered a judgment in a trial by written declaration held in absentia, the defendant may request a trial de novo.</b></p> <p><b>~ When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be heard on ability to pay before notifying the Department of Motor Vehicles (DMV).</b></p> <p>The procedure in the first paragraph above refers to a trial in absentia outlined in Vehicle Code section 40901 which requires an enacted local rule, and is highly problematic as to the evidence it might allow in. (It is <b>not</b> a reference to “Trial by Declaration” under Vehicle Code section 40902.) My fellow Commissioners have routinely stated they thought the statute ignores due process and allows evidence that is inadmissible. Query whether this rule would modify a current statute which to me appears to be an unlawful legislative action by enactment of a Court Rule. There is no provision in VC 40901 et seq for a trial de novo, See e.g. the Vehicle Code sections implementing the TBD process which are adopted into the ruled of court.</p>	<p>Response: Proposed rule 4.106(f) addresses procedures for trial in absentia under Vehicle Code section 40903. The rule does not purport to modify this Vehicle Code section.</p>

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			<p>The second paragraph will require the sending of more notices. Impact: This procedure contemplates a law and motion calendar for Court, or adding these to the regular mix in with the arraignment or trial calendar. These hearings may bog down in minutiae: each hearing will require court records regarding payments made and records re the defendant’s financial status (by experience these often tend to be, shall we say, somewhat fictional). The court records may be in an Odyssey file, the clerk will have to bring them up or the court will have to sort through Odyssey to find each one. See my discussion infra on the issues presented by accessing court files in Odyssey. I don’t think the process is amenable to using Judges Edition.</p> <p><b>4.107 Courtesy Notices</b></p> <p>The proposed rule makes them mandatory thus no longer courtesy. All our Courtesy Notices will have to be redrafted. We send out tens of thousands of these yearly as a single page document. Impact: the required/suggested changes to courtesy notices will substantially expand the verbiage they already contain and likely push them out to a 2-page document. I believe we should determine what sort of written notice is required “globally” based on all the changes these rules implement such that the usual information presently imparted that allows the user to consider his or her options also</p>	<p>Response: The notice and opportunity to be heard provided for in subdivision (g) is required before a court notifies the DMV under Vehicle Code section 40509(b) and/or 40509.5(b). Furthermore, a hearing is not required under subdivision (g) unless requested by the defendant or directed by the court.</p> <p>Response: The committees recognize that mandating reminder notices may increase costs to courts. However, the committees have decided that, on balance, the benefits of ensuring sufficient notice to defendants outweighs such costs. To help mitigate such costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by e-mail or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, they have recommended an extended implementation date to allow courts</p>

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			<p>includes any additional notice required by these new rules so as to cut down on the number of mailings. Additional notice forms on separate document will substantially impact costs of processing and mailing. In that additional notice may only be triggered by an FTA or FTP it may not be possible to give all required notice in one mailing but that should be the goal. We cannot assume that traffic litigants generally have access to the internet for further information, in truth most of those who might be seeking redress on FTAs and civil assessments don't have that luxury.</p> <p><b>Proposed rule 4.335</b></p> <p><b>Vehicle Code section 42003, governing payment of fines and costs for Vehicle Code violations, provides that, upon request of a defendant, the court must consider the defendant's ability to pay. This proposed rule would standardize and improve procedures for ability-to-pay determinations for all infraction cases. This rule would provide the following:</b></p> <ul style="list-style-type: none"> <li>~ <b>Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination;</b></li> <li>~ <b>A defendant may request an ability-to-pay</b></li> </ul>	<p>additional time to implement this requirement.</p>

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			<p>determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections;</p> <p>~ The court must permit the defendant to make the request in writing, unless the court directs an appearance;</p> <p>~ The court may delegate the initial determination of the defendant's ability to pay to a clerk or other county revenue collections agency using specified factors;</p> <p>~ A defendant has the right to a review by a judicial officer if requested in writing within 20 calendar days of the sending of the notice of the decision;</p> <p>~ Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service, suspend the fine in whole or in part, or offer an alternative disposition;</p> <p>~ The defendant may request an ability-to-pay determination at any time before the final payment date or completion date;</p> <p>~ If a defendant has already had an ability-to-pay determination, a defendant may only request a subsequent ability to pay</p>	



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			<p><b>determination based on changed circumstances;</b></p> <p><b>~ The court may deny the defendant’s request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests.</b></p> <p>This substantial procedure is triggered by 1) our required notice to defendant of the rights and procedures involved in a due process setting for “ability to pay” and how to request that determination, and 2) the defendant’s communication to the court, both requiring clerical processing and possible calendar setting.</p> <p>1. The court <b>MUST</b> allow the defendant to make that request in writing. That will either occur prior to arraignment, or at trial or at sentencing or post sentencing. Assumably written requests post judgment could be handled in the course of business by way of what the Commissioner already handles in ex parte requests to modify. Pre arraignment written requests will have to be processed and added to the file if the request is to be heard at arraignment. Of course any precourt announcements either oral or recorded will have to be re-written and re-recorded to include advisements</p>	<p>Response: This proposal requires courts to provide defendants with notice of their right to request an ability-to-pay determination and to make available instructions or other written materials. The committees have added an advisory committee comment noting that this notice may be provided on the reminder notice required by proposed rule 4.107, the notice of civil assessment required by Penal Code section 1214.1, a court’s website, or any other notice provided to the defendant. A court may revise its advisements to defendants to inform them of their right to make a request under this rule, but it is not required to. It may notify defendants utilizing other means.</p>

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			<p>pertaining to this rule. (Query however whether the People have any vested interest in this and may also be entitled to notice that the defendant has made the request.)</p> <p>The court would have to accept at face value the documents or declarations any defendant might provide. The court may also have to reference court records of the defendant's payments, or have reference to data that would allow the court to determine whether "an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests" which are stated as grounds to deny the request. Someone in clerical may have to amass data on that defendant's case(s). Impact: Clerical processing of requests and the court's response as well as mailing the court's response. In implementation of Odyssey this will also require scanning these written requests at intake, and possibly creating a new "calendar" in Odyssey with Judicial access to allow on-line response by the judicial officer (assumably doing these in batches). Correlating information from Odyssey as to court records or payments made or bail will require toggling back and forth through other Odyssey records unless clerical can make up a "Review Packette" which is sent to the Commissioner for review.</p>	<p>Response: If the court questions the veracity of the documents or the defendant's credibility, it may direct a court appearance to examine the defendant. The court retains discretion to deny the defendant's request.</p> <p>Response: The committees have removed the provision allowing for courts to deny requests because an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests.</p>

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			<p>2. If these requests are made at arraignment it likely will substantially slow the arraignment process which generally moves very quickly. I am only speaking as to a traffic arraignment calendar which usually does not include misdemeanors other than simple VC 12500 license violations and does not include participation by appointed defense counsel, so I am not speaking to the additional issues presented by any defense counsel needing to become involved in the client’s representations at arraignment.</p> <p>3. The defendant may request an ability to pay determination “at or after adjudication” which means the defendant must be able to provide all information to the court to make that assessment at the arraignment and plea or at trial. Further the court would have to have access to any relevant court data that may assist in determining the merits.</p> <p>4. The court may delegate the initial determination of the defendant’s ability to pay to a clerk or other county revenue collections agency using specified factors. What comprises a “determination” is unclear, a non-judicial forum may be available but see a 2016 case Weiss v. City of Los Angeles (<a href="http://www.courts.ca.gov/opinions/documents/B259868.PDF">http://www.courts.ca.gov/opinions/documents/B259868.PDF</a>) for the pitfalls of trying to outsource judicial obligations.</p>	<p>Response: Under proposed rule 4.335(c)(2), a defendant may request an ability-to-pay determination at arraignment after admitting guilt. However, rule 4.335 does not require a court to make an ability-to-pay determination at that time. The court may direct an appearance on another date under subdivision (c)(3) of that proposed rule if the arraignment calendar cannot accommodate a determination of the defendant’s request.</p> <p>Response: The committees have revised the proposal to allow a defendant to request an ability-to-pay determination at adjudication or while the judgment remains unpaid. The court retains discretion to direct another hearing if the defendant or the court is not prepared to proceed at the time the defendant makes the request.</p> <p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.</p>

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			<p>Delegating the initial ability to pay to clerical or revenue will require strict guidelines and I suggest delegating it to Revenue (or any collections agency) could be viewed by some as a conflict of interest since it is Revenue’s obligation to maximize recovery on any debt owed. Who decides what “specified factors” are? Are they the same across the state? In that the defendant then has an additional right to a judicial review after “the sending of notice” is that review satisfied if a judicial officer makes the determination in the first place? Is it a de novo review?</p> <p><b>Rule 4.106. Failure to appear or failure to pay for a Notice to Appear issued for an infraction offense</b></p> <p><b>(a) Application</b></p> <p><b>This rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay.</b></p> <p>The language here is problematic as it does not differentiate between a signed promise to appear and a “written notice to appear.” The Vehicle Code speaks to violating a “written promise to appear” and giving notice to the DMV for any FTA. Does “written notice to appear” also include cite-in letters issued by the District</p>	<p>Response: The committees agree with the suggestion that the application of this proposal should be clarified. The committees have deleted the language “and been released for a signed promise to appear” from the proposed advisory committee comment.</p>

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			<p>Attorney, cite-in letters issued by the Court and/or the mandatory courtesy notices? A failure to appear on a signed promise to appear is would seem equivalent to failing to appear on a personally served subpoena. We generally don't issue bench warrants on FTAs on infractions, thus the only other recourse has been to declare the matter eligible for collections, which under this new scheme would appear to require an additional round of notice to afford the defendant yet another chance to dispute it before or after it goes into collections. These are only general observations, there are many more nuances that for the sake of brevity I cannot cover here, but I believe the substantial impact these rules might create on the courts, court costs, daily existing calendars, adding additional calendars, additional clerical processing , mailing, and computer programming or modification of existing programs to enable efficient data collections should be viewed critically in view of what the court needs to accomplish to reach the due process goal.</p>	
9.	<p>Bill Niles Owner Traffic Violator School</p>	<p>N/I</p>	<p>My name is Bill Niles, and I am one of the owners of a traffic violator school. We would request that the committee consider including a notice, in the proposed Mandatory Courtesy Notice, that states in effect:</p> <p>“Any traffic violator school you attend will charge you a fee, that is in addition to the</p>	<p>The committees appreciate Mr. Niles’ input. The committees agree with his suggestion and have revised the proposal to require that the reminder notice notify defendants that a traffic violator school will charge a fee in addition to the administrative fee charged by the court.</p>

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			<p>administrative fee you pay to this court for the privilege of attending a traffic school.”</p> <p>Very often when a traffic violator calls in to schedule a class, they believe that they have already paid the fee to attend a traffic school class, and we have to continuously explain the difference in these “fees”.</p> <p>Thank you for your consideration of this issue.</p>	
10.	<p>Superior Court of California, El Dorado County By Jackie Davenport Assistant Court Executive Officer</p>	N	<p>Proposed Rule 4.106 Recommend the following changes. Often a judicial officer may reduce the civil assessment as opposed to vacating the entire assessment. It would clarify for individuals that civil assessment may be reduced as well as vacated.</p> <ul style="list-style-type: none"> <li>•When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated or reduced for good cause and must include information about the process for vacating or reducing the assessment.</li> <li>•When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate or reduce the civil assessment because</li> </ul>	<p>Response: The committees agree that this section needs clarification. The statute is clear that if good cause is shown, a judicial officer <i>must</i> vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (<i>Id.</i>, § 1214.1(a).) The proposed rules, as circulated, were intended to highlight this distinction, but several commenters wanted to specify reduce in this subdivision. Proposed rule 4.106(c)(1) now includes “reduce” along with “vacate”.</p>

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			<p>the defendant had good cause for failing to appear or pay. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.</p> <p>Suggest that the proposal to allow for the defendant to request a hearing for adjudication be clarified to apply only to cases that have not previously been adjudicated.</p> <ul style="list-style-type: none"> <li>• When a court refers unpaid bail to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, unless there has been a prior adjudication of guilt.</li> </ul> <p>We disagree with the proposal to allow for a defendant to request a modification of the judgment and would recommend this be deleted. The judgment should be final and a defendant should not have the option to request a modification.</p> <ul style="list-style-type: none"> <li>• When a defendant fails to pay under an installment plan, the defendant may request modification of the judgment. Recommend be deleted.</li> </ul> <p>Proposed Rule 4.107</p>	<p>Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated that it applied in unadjudicated cases. However, several commenters requested further clarification that this subdivision applies only in unadjudicated cases. The committees have revised this subdivision as requested.</p> <p>Response: The committees agree this subdivision needs clarification. The committees received several comments expressing concerns about the phrase “modify or vacate the judgment.” The committees have revised the rule to state “modify the payment terms” to address these concerns.</p>

**SP16-08**

**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

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			<p>We are opposed to providing the defendant with a courtesy notice. May 1, 2013 the El Dorado Court discontinued providing courtesy notices as an efficiency for the court and due to budget constraints. Defendants may review the court index online to find their case information, bail (fine) or appearance information. Our online information also includes information regarding installment payment plans, requesting a trial, potential consequences for FTA/FTP, etc. This works well for our court and defendants. Defendants already sign the citation “promising to appear at the time and place indicated”. On the reverse side of the signed citation under “What to Do”, it specifically outlines the required steps. Our court provides defendants with a 20 day notice if they fail to appear or fail to pay which gives them an opportunity to address their citation.</p> <p>This proposed change would create a financial burden on the court. The cost to provide courtesy notices would be conservatively estimated at \$38,000 with annual citation filings ranging from 13,000 to 18,000. If this proposed change is to be considered, it should include funding.</p> <p>Proposed Rule 4.335 These requirements would put extreme burden on the court’s resources. During a defendant’s arraignment or trial they have an opportunity to request an ability to pay determination, a</p>	<p>Response: The committees recognize that mandating reminder notices will increase costs to courts. However, the committees have decided that, on balance, the benefits of providing enhanced notice to defendants outweigh the costs. To help mitigate these costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by e-mail or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, they have recommended an extended implementation date to allow courts additional time to implement this requirement.</p>



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			<p>reduction of the fine, community services or payment plans.</p> <p>Requests for an ability to pay determination should be limited to pre-adjudication. If allowed for post adjudication there should be a time limit. The number of times a defendant may request an ability to pay determination should also be limited.</p> <p>These requirements should only be implemented if funding is provided. El Dorado Court files 13,000 to 18,000 citations annually. The cost of providing additional notices of the right to request an ability to pay determination would be conservatively estimated at \$38,000 which includes postage, envelopes, paper, and staff time. The cost for conducting hearings on 50% of the filings is estimated to be \$106,110.</p> <p>The impact of these proposed rules on the court's budget would be a substantial hardship which would affect our staffing levels, backlogs for courtroom calendars and processing.</p>	<p>Response: This rule is modeled on Vehicle Code section 42003, which contemplates that the court will consider a defendant's ability to pay when the defendant appears "for adjudication" and "[a]t any time during the pendency of the judgment." (Veh. Code, § 42003(c), (e).) The committees decline to limit the request to pre-adjudication. Additionally, because section 42003 contemplates that a defendant may request an ability-to-pay determination based on changed circumstances, the committees decline to revise the proposal to restrict the number of times that a defendant may make the request.</p> <p>Please see the response above on the impact of these proposed rules on the court's budget.</p>

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	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
11.	Superior Court of California, Glenn County By Kevin Harrigan Court Executive Officer	N/I	The proposals would not provide cost savings. The proposal would likely increase costs by way of implementation (i.e., programming changes for notices and case management systems, staff training of new processes) and ongoing operational costs (i.e., supplies, courtroom and staff time for an unknown number of ability to pay determinations, unknown number requests for appearances after a case has been sent to collections, etc.). Further, it is foreseeable that the changes would negatively impact civil assessment revenue. While the Court has no objection to the intent of the rule changes which are to enhance procedural fairness for traffic infraction proceedings, the combination of additional workload and less operating revenue needs to be addressed in some manner to prevent sacrifices in access and fairness on other case types.	The committees appreciate the court's input. The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.
12.	Superior Court of California, Los Angeles County	AM	<b><u>Amendment to Rule 4.105</u></b>  The proposed amendment adds one sentence: "The website for each trial court must include a link to the traffic self-help information posted at: <a href="http://www.courts.ca.gov/selfhelp-traffic.htm">http://www.courts.ca.gov/selfhelp-traffic.htm</a> ."  Comment: Support. The thrust of much of the criticism of existing traffic procedures is not that defendants lack due process protections, but that too many defendants do not know the law.	The committees appreciate the input provided by the court.  No response necessary.

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	Commentator	Position		Committee Response
			<p>Given that nearly all traffic defendants are self-represented, self-help for traffic makes sense. The challenge will be to craft self-help guidelines that reflect accurately the complexity of traffic case processing.</p> <p><b><u>Proposed rule 4.106. Failure to appear for failure to pay for a <i>Notice to Appear</i> issued for an infraction offense</u></b></p> <p><i>(c) Procedure for consideration of good cause for failure to appear or pay</i></p> <p>General comments:</p> <p>First, statutory provisions should not be incorporated into rules of court. This is redundant, incurs costs when rules must be updated to reflect statutory changes, and risks the rule becoming out of date when statutes change. It appears that the drafters are seeking to transform the CRC into self-help materials for litigants. But there is no reason to believe that the CRC is significantly more accessible to defendants than is the Vehicle Code; in any case, that is not the proper function of the CRC.</p> <p>Second, court procedures should be transparent to defendants, but that transparency is better achieved through online or written materials, not notices.</p> <p>Generally, these proposals illustrate the</p>	<p>Please see responses to specific comments below.</p>

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			<p>proposition that suitable and easily accessible self-help materials, online and in writing, are better solutions to the needs of defendants than are extensive and costly rule-making and notice requirements.</p> <p>“(1) A notice of a civil assessment under section 1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating the assessment.”</p> <p>Comment: The enumerated right is redundant with PC 1241.1(b)(1). The rule goes beyond the statute to the degree that it requires applicable procedures to be incorporated in the notice. Available procedures can be explained in self-help materials.</p> <p>“(2) When a notice of civil assessment is given, a defendant may, within 20 days of sending the notice, move by written petition to vacate the assessment by showing good cause to excuse the failure to appear or failure to pay.”</p> <p>Comment: Redundant with PC 1214.1(b)(1), which states that “The assessment imposed pursuant to subdivision (a) shall not become effective until at least 20 calendar days after the</p>	<p>Response: Although the commenter correctly states that a defendant’s rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council “to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute”].)</p> <p>Response: Although the commenter correctly states that the defendant’s rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for</p>

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			<p>court mails a warning notice to the defendant...” Available procedures for requesting to vacate can be explained in self-help materials.</p> <p>“(3) Courts must permit a defendant to present a showing of good cause for failure to appear or failure to pay a fine or installment of bail without requiring receipt of the payment of bail, fines, penalties, fees, or assessments.”</p> <p>Comment: Redundant with existing CRC 4.105(b). The Advisory Committee Comment enumerates some of the circumstances that may indicate good cause, potentially reducing judicial discretion, or at least causing confusion, to the extent that its embodiment in rule encourages defendants to cite to it.</p> <p>“(4) A petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.”</p> <p>Comment: Support. This provision helps to discourage defendants from using such petitions as tactics to delay payment.</p> <p>“(5) The court must vacate the assessment upon a showing of good cause under section 1214.1(b)(1) for failure to appear or failure to pay.”</p>	<p>vacating or reducing the civil assessment. As discussed above, this is a common and appropriate purpose for rules of court. Self-help materials cannot establish procedures.</p> <p>Response: This portion of proposed rule 4.106 specifically addresses situations when defendants have failed to appear or pay and when civil assessments are imposed, whereas rule 4.105 addresses arraignment and trial.</p> <p>No response necessary.</p>

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		<p>Comment: Redundant with PC 1214.1(b)(1).</p> <p>“(6) If the defendant does not establish good cause, the court may still exercise its discretion under section 1214.1(a) to reconsider: (A) Whether a civil assessment should be imposed; and (B) If so, the amount of the assessment. In exercising its discretion, the court may consider a defendant’s due diligence in appearing or paying after notice of the assessment has been given under section 1214.1(b)(1), as well as the defendant’s financial circumstances, among other factors.”</p> <p>Comment: Redundant with PC 1214.1(a) (“the court <b>may</b> impose a civil assessment of <b>up to</b> three hundred dollars,” emphasis added). This is an example where the conciseness of the existing statute is preferable to the more verbose language that results when using the CRC to provide instructions to litigants.</p> <p><u>(d) Procedure for unpaid bail referred to collection as delinquent debt</u></p> <p>Rule 4.106(d) has the effect of declaring that the provisions of 4.105 pertain to collections referrals. It is thus redundant with Rule 4.105.</p>	<p>Response: Although rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. As discussed above, this is a common and appropriate purpose for rules of court.</p> <p>Response: The commenter is correct that the statute provides judicial discretion to impose an amount of up to \$300. (Pen. Code, § 1214.1(a.) The proposed rule is intended to provide courts with guidance regarding vacating or reducing civil assessments and to clarify the statute. As discussed above, this is a common and appropriate purpose for rules of court. Based on the comments received, it appears that there is confusion regarding whether a civil assessment can be reduced for good cause, thus this clarification appears warranted.</p> <p>Response: The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns regarding requiring defendants to post bail before challenging traffic infractions. In</p>

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			<p><u>(e) Procedure for failure to pay on an installment payment plan</u></p> <p>“When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the judgment, or the defendant may request or the court may direct a court appearance.”</p> <p>Comment: Insofar as it does not specify the grounds for the petition, this section is overly broad. VC 42003(e) provides that, “At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment <b>on the grounds of a change of circumstances with regard to the defendant’s ability to pay the judgment.</b>” (emphasis added) There is no such limitation in proposed Rule 4.106(e). If there were, the proposed rule would be redundant with statute.</p> <p><u>(f) Procedure after a trial by written declaration in absentia for a traffic infraction</u></p> <p>“When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time</p>	<p>adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay fines or fees. This subdivision of 4.106 is meant to address situations when a defendant has failed to appear in unadjudicated cases.</p> <p>Response: The committees agree that this subdivision needed clarification. The rule has been revised to clarify the limitations that apply if the request to modify is based on a request other than ability to pay.</p>

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			<p>permitted, courts may require the defendant to deposit bail. After the court receives the bail deposit, the court must vacate the judgment.”</p> <p>No comment.</p> <p><i><u>(g) Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine</u></i></p> <p>“Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay.”</p> <p>Comment: The VC sections cited refer to failures to pay, and thus assume that the case has been adjudicated. Standard case processing would satisfy proposed Rule 4.106(g) if, at adjudication, the defendant has notice and opportunity to raise the issue of ability to pay. This could be accomplished by a general notice provided to all those who attend a court hearing or participate in a Trial by Declaration. Such standard procedures, accomplished elsewhere in the CRC, would render this section redundant and thus obviate the need for an additional notice.</p> <p><b><u>Proposed rule 4.107: Mandatory courtesy notice</u></b></p>

No response necessary.

Response: Several commenters requested clarification regarding notice of and opportunity to be heard on ability to pay. The proposed rule has been revised to clarify that the notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant



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			<p>No comment.</p> <p><b><u>Propose Rule 4.335: Ability-to-pay determinations for infraction offenses</u></b></p> <p><i><u>Proposed Rule 4.335(b) Required notice regarding an ability-to-pay determination</u></i></p> <p>“Courts must provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination.”</p> <p>Comment: This is redundant with the provisions of the mandatory courtesy notice.</p> <p><i><u>Proposed Rule 4.335(c) Procedure for determining ability to pay</u></i></p> <p>“(1) The court, on request of a defendant, must consider the defendant’s ability to pay. (2) A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. (3) The court must permit a defendant to make this request by written application unless the court directs a court appearance.”</p> <p>Comment: Redundant with VC 42003.</p>	<p>No response necessary.</p> <p>Response: Although proposed rules 4.107 and 4.335 do overlap, rule 4.335(b) is more expansive than rule 4.107(b)(7) because (1) it encourages courts to provide notice of the right to request an ability-to-pay determination not only in the reminder notice, but also in other notices and locations, if applicable; and (2) it requires that courts also “make available instructions or other materials for requesting an ability to pay determination.” In addition, the committees have revised this subdivision to provide further guidance by clarifying that the notice “may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.”</p> <p>Response: This rule is modeled on Vehicle Code</p>

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			<p>section 42003, which does require that courts consider the defendant’s ability to pay. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and rules of practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council “to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute”].)</p> <p>In addition, proposed rule 4.335(c)(3) would provide for a procedure to implement Vehicle Code section 42003 that is not stated expressly in the statute: a court would be required to permit a written request for an ability-to-pay determination, unless it directs a court appearance.</p> <p>“(4) The court may delegate to a clerk or other county revenue collections agency the initial determination of the defendant’s ability to pay a court-ordered fine using the following criteria:            (A) Evidence of receipt of public benefits under one or more of the following programs:            (i) Supplemental Security Income (SSI);            (ii) State Supplementary Payment (SSP);            (iii) California Work Opportunity and Responsibility to Kids (CalWORKS);            (iv) Federal Tribal Temporary Assistance for Needy Families (Tribal TANF);            (v) Supplemental Nutrition Assistance Program, California Food Assistance Program;            (vi) County Relief, General Relief (GR), or General Assistance (GA);            (vii) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI);            (viii) In-Home Supportive Services (IHSS); and            (ix) Medi-Cal; and            (B) Evidence of a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2).”</p> <p>Comment: Cf. VC 42003(c), which provides</p>

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			<p>that:</p> <p>“In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this [Vehicle] code, the court, upon request of the defendant, shall consider the defendant’s ability to pay. Consideration of a defendant’s ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required.”</p> <p>We note that defendants appearing in court routinely plead inability to pay; this is not a new right, nor a new practice. The proposed rule creates the possibility of an administrative determination of ability to pay, and thus an increase in efficiency compared to a courtroom hearing.</p> <p>However, we believe this benefit is outweighed by the following problems: First, the proposed rule, by specifying binary criteria (i.e., evidence of SSI), appears to make the ability-to-pay determination all-or-nothing, while statute provides that, upon request, the court may inquire “into the ability of the defendant to pay all or a portion of those costs...” (VC 42003(c)), thus implying the ability to impose partial judgments. This would have the effect of</p>	<p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant’s ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.</p>

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			<p>making a large class of people immune to financial penalty for traffic violations. Second, such policy decisions are beyond the purview of the Judicial Council. Third, by making bright-line criteria (modeled upon fee waiver provisions), the proposed rule would remove the judge's discretion in this area. Additionally, if a court delegates the review to a clerk on a case that has not yet gone to collections, then the costs are not recoverable; these cases will result in increased court costs.</p> <p>“(5) The defendant has the right to a review by a judicial officer of the determination made by the clerk or the collection agent, if requested in writing within 20 calendar days of the sending date of the notice of decision. The defendant must be advised of the right to seek this review.”</p> <p>No comment.</p>	<p>No response required.</p>
13.	<p>Superior Court of California, Riverside County By Susan Ryan Chief Deputy of Legal Services</p>	AM	<p>General Comments: There is an appearance of impropriety when a judicial officer is required to both impose a fine and determine a defendant’s ability to pay that fine. This is because there is a great deal of notoriety concerning the imposition and collection of fines and fees by traffic courts. Recently, legal advocacy groups, as well as other organizations have claimed that the judicial system is funding courts, in part, off the</p>	<p>The committees appreciate the input provided by the court.</p> <p>Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.</p>

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			<p>backs of poor people by imposing unreasonably costly fines; and when the defendant can't pay, enforcing collection through an unjust system of drivers' license suspensions.</p> <p>In this climate it is difficult, if not impossible, for a judicial officer to avoid the appearance of impropriety when imposing a fine, and then determining the defendant's ability to pay, as the bench officers decision will be perceived as driven by the need to secure court funding. Though a discussion about court funding is beyond the scope of these proposals, it is nevertheless important to recognize this reality as we consider the proposed rules, particularly as they relate to requiring court hearings on a defendant's ability to pay.</p> <p>In addition to the appearance of impropriety, from a practical standpoint there are good reasons for a judicial officer to refrain from making ability to pay determinations in open court. In order to determine the ability to pay a defendant is required to provide proof of his or her financial circumstances. To protect a defendant's privacy and encourage disclosure of all relevant financial information, a defendant should not be required to disclose sensitive information at a court hearing. While a defendant may be reluctant to disclose in open court that he or she is receiving public assistance, such reluctance is significantly reduced in a private administrative setting.</p>	<p>Response: Court records and proceedings are open to the public, unless made confidential by law or sealed by court order. (See <i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> (1999) 20 Cal.4th 1178 [recognizing a constitutional right of access to criminal cases]; Cal. Rules of Court, rule 2.550(c) ["Unless confidentiality is required by law, court records are presumed to be open"].) Vehicle Code section 42003 does not make ability-to-pay determinations confidential. Providing for confidentiality by rule is outside the scope of the present proposal, but the committees may consider this suggestion in developing future proposals.</p>

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			<p>Thus, while the ultimate decision on reducing the fines or conversion to community service would remain with the judicial officer, the rules should encourage an administrative process to assess a person’s financial circumstances. Additionally, an ability to pay determination should take place only after adjudication of the offense either by plea of guilty or no contest or following trial.</p> <p>Rule 4.106(d)(2) This rules states that “the defendant may request an appearance date to adjudicate the underlying charges by written petition”. The rule should allow for flexibility to allow defendants (and courts) to use alternative methods other than written petition to request appearance dates, such as online reservations systems, etc.</p> <p>Rule 4.106(e) This rule states that if a defendant fails to pay on an installment plan he or she may request modification or vacation of the judgment. This raises an expectation that by making a request the defendant may either have their fine vacated or reduced. The rule should clarify that the court may choose not to modify the amount of the judgment, and that it may modify the installment plan by reducing the payment amount and giving more time to pay, or approve community service.</p>	<p>Response: The committees agree with this suggestion and have revised the subdivision as recommended.</p> <p>Response: The committees have clarified in the advisory committee comment for subdivision (e)(1) that a court may exercise its discretion to deny a defendant’s request to modify the payment terms. The committees have also added an advisory committee comment to clarify the options available to the court, including modifying the payment terms as the court sees fit.</p>

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			<p>However, if rule remains ‘as is’ section (e)(5) should reflect “The court may deny the defendant’s request to modify or vacate the judgment [...].</p> <p>Rule 4.335(c)(4) This rule contemplates that if a defendant requests an ability to pay determination the court may delegate the initial evaluation to a clerk, or other county revenue collections agency. Thus, it seems to suggest that a judicial officer must make any subsequent determination. The rule should be clarified to permit the court to delegate initial and subsequent ability to pay determinations to a clerk, a comprehensive collection program, or other county revenue collections agency.</p> <p>Rules 4.105, 4.106, 4.107 should clarify the applicability of the rules to minors (under the age of 18). Welfare and Institutions codes §§256, 257 &amp; 258 specifically address infraction violations that are handled under the jurisdiction of the juvenile court. However, many courts make a distinction between vehicle code (VC) and non-vehicle code infraction citations when it comes to minors. Some courts allow infraction violations to be handled outside the jurisdiction of the juvenile court.</p> <p>Request for Specific Comments</p>	<p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant’s ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.</p> <p>Response: The committees decline to specify whether the rules apply globally to “juveniles” in light of the varying practices for handling traffic violations that are authorized by statute. (Compare Welf. &amp; Inst. Code, § 603.5 [adjudicating traffic infractions committed by minors in adult traffic court], with <i>id.</i>, § 256 [procedure using juvenile hearing officers].) To the extent that traffic violations by minors are adjudicated in adult traffic court, these rules would apply.</p>

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			<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li> <li>• Would the proposal provide costs savings? No.</li> <li>• Would the proposal increase costs? Potentially; bail quotes (courtesy notices) will need to be modified to include information specified in the proposed rules. In some instances, the rule provides for additional notice (or review) which will potentially increase judicial and staff time.</li> <li>• What would the implementation requirements be for courts? Possible changes to case managements system, including notices and updates to website. Possible changes will be needed to internal interfaces and/or interfaces with third-party vendors (IVR systems, E-Pay systems, Kiosks, etc.). Judicial and staff training will be required.</li> <li>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. Being that interfaces with third-party vendors may need to be updated. We strongly urge that the effective of the proposed rules be changed to July 1, 2017.</li> </ul>	<p>Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.</p> <p>Please see response above.</p> <p>Please see response above.</p>
14.	Superior Court of California,	N	Overview – Currently, Sacramento Court does	The committees appreciate the court’s input. They



**SP16-08**

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Commentator	Position		Committee Response
<p>Sacramento County By Marcia Barclay Director of Operations</p>		<p>not send courtesy notices to the violator and has not since 2010. After much analysis and study, the Court worked with local law enforcement agencies to develop a method for giving the violator a date to appear at the time of arrest. Along with the date to appear, the Court’s website information is printed at the bottom of every citation, including those that are now electronically filed. As a result, the violator knows immediately the date they must appear by, has access via the web to their bail and much more information than can be included on a single piece of paper, and in much less time than it would take for the Court to print and mail a courtesy notice.</p> <p>Increase in Mailing/Printing Costs - Based on the average number of citation filings over the past 5 years in Sacramento, and the price of paper, envelopes, printer ink, and postage, the mailing cost for courtesy notices would be approximately \$108,768.00 per year.</p> <p>Increase in Staff Costs - Mandatory courtesy notice printing and mailing of over 200,000 notices per year would require .75 FTE at a cost to the Court of approximately \$63,534.00. This does not include the cost of the time required for determination of whether or not the violator received their courtesy notice, a complaint that will be inevitable once the information that the Court is again providing them is distributed.</p>	<p>recognize that mandating reminder notices will increase costs to courts. However, the committees have decided that, on balance, the benefits of providing enhanced notice to defendants outweighs the costs. To help mitigate these costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by email or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. Lastly, the committees have extended the implementation date to allow courts additional time to implement this requirement.</p> <p>Please see response above.</p> <p>Please see response above.</p>

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			<p>This would be in addition to the recent Amnesty program which is costing the Court another two (2) FTE.</p> <p>Increased Development for New CMS – Because Sacramento does not currently send courtesy notices, no provision was made for that functionality in development of our new case management system. Although batch printing of courtesy notices is included in the requirements and no extra cost will result, development hours will need to be spent in configuration of the system and forms. As these notices are mandatory, they will need to be stored in the document management system, requiring more memory and possibly increasing hardware costs.</p> <p>Increased Judicial Involvement – “I never received a courtesy notice your honor”. This will be the refrain for many who fail to appear on their promise to appear date. What response is necessary from the Court when a defendant so states? Is it a defense for failing to appear now that the notice is mandatory?</p> <p>The Sacramento Court in general would comment that the proposed rule is both costly and unnecessary. Courtesy notices serve no purpose to those who are homeless or those who have changed their address without notifying DMV. Courtesy notices are especially</p>	<p>Please see response above.</p> <p>Please see response above.</p> <p>Response: To address these concerns, the committees have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear. While the court must send the notice, no consequences would attach if the notice were returned as undeliverable.</p> <p>Please see response above.</p>

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	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
			irrelevant when at the time of the arrest and signing of the citation, the violator is given a date to appear and a means of accessing all the information needed to resolve the matter.	
15.	Superior Court of California, San Francisco County By T. Michael Yuen Court Executive Officer	N/I	<p>The San Francisco Superior Court submits our comments regarding the Invitation to Comment SP16-08. This letter details our operational impacts from the proposed changes to Rules 4.106, 4.107, and 4.335 of the California Rules of Court. Enclosed are our proposed changes to mitigate our concerns.</p> <p>If the proposed rules are adopted, it would create an additional annual cost of \$1,480,446 to our Court to implement these processes. There would also be an additional cost to train 33 staff members on these new processes. Our specific comments on the proposed changes are below.</p> <p><b>Rule 4.106(c)(2)</b></p> <p>The language, “Alternatively, the defendant may request or the court may direct a court appearance,” should be stricken because allowing a court appearance hearing for every petition request would require significantly more staff and judicial resources. Specifically, our Court estimates that 18,000 petition requests would be received annually. With a processing time of 15 minutes each, this would create an additional annual cost of</p>	<p>The committees appreciate the court’s input.</p> <p>Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.</p> <p>Response: The committees agree this language should be stricken because written petitions, when feasible, should be encouraged for the convenience of both the defendant and the courts. The committees have removed the language as suggested.</p>

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	Commentator	Position		Committee Response
			<p>\$397,937 for our Deputy Clerks II and Deputy Clerks III (“our staff”) to process these petitions. Rather, we believe that the current paper petition and review process is sufficient.</p> <p><u>The Rule would read as follows:</u> When a notice of civil assessment is given, a defendant may, within 20 days of sending the notice, move by written petition to vacate the assessment by showing good cause to excuse the failure to appear or failure to pay.</p> <p><b>Rule 4.106(e)</b></p> <p>Adding the language “or make a payment under” and striking the word “on” would ensure language consistency throughout the Rule.</p> <p><u>The Rule would read as follows:</u> Procedure for failure to pay or make a payment under an installment payment plan</p> <p><b>Rule 4.106(e)(l)</b></p> <p>The language “or the defendant may request” should be stricken because requests for a court appearance would require significantly more staff and judicial resources. Approximately 40 percent of cases on installment plans fall delinquent, which is the statewide average. Specifically, our Court currently has 100,000 cases on installment plans, which equates to</p>	<p>Response: The committees agree to make this revision as recommended.</p> <p>Response: The committees decline to accept this suggestion. While written petitions should be encouraged when feasible, the committees decline to remove the language as recommended.</p>

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	Commentator	Position		Committee Response
			<p>the Court having to consider 40,000 requests for court appearances. With a processing time of 10 minutes each, this would create an additional annual cost of \$719,716 for our staff to process these requests.</p> <p><u>The Rule would read as follows:</u> When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the Judgment or the court may direct a court appearance.</p> <p><b>Rule 4.106(e)(3)</b></p> <p>Revising “request” to “petition” would ensure language consistency throughout the Rule.</p> <p><u>The Rule would read as follows:</u> The petition to modify a judgment or order does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court.</p> <p><b>Rule 4.106(e)(4)</b></p> <p>Revising “requests” to “petitions” would ensure language consistency throughout the Rule.</p>	<p>Response: The committees agree and have made this revision as recommended.</p> <p>Response: The committees agree and have made this revision as recommended.</p>

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Commentator	Position	Committee Response	
		<p>The Rule would read as follows: If the defendant petitions to modify or vacate the judgement based on an inability to pay, the procedures stated in rule 4.335 apply.</p> <p><b>Rule 4.106(e)(5)</b></p> <p>Adding the language, "If the petition to modify or vacate the judgement is not based on an inability to pay," would clarify that a petition to modify a judgement is not solely based on a defendant's inability to pay.</p> <p>The Rule would read as follows: If the petition to modify or vacate the judgement is not based on an inability to pay, the court may deny the defendant's request to modify the judgment and order no further proceedings if the court determines that: ....</p> <p><b>Rule 4.106(e)(5)(C)</b></p> <p>The addition of a new subdivision (C) would uphold judicial discretion when considering requests to modify or vacate the judgement.</p> <p>The Rule would read as follows: (C) This subdivision does not preclude the court from denying the petition to modify or vacate the judgment for other reasons.</p> <p><b>Rule 4.106(f)</b></p>	<p>Response: The committees agree and have made this revision as recommended.</p> <p>Response: The court may still deny the defendant's petition for other reasons. The committee has added an advisory committee comment clarifying that the court may exercise its discretion to deny the request to modify the payment terms.</p>

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			<p>The language, “After the court receives the bail deposit, the court must vacate the judgment,” should be stricken because this proposal would essentially create double, and possibly triple, work for our staff. Specifically, our Court considers approximately 600 trials de novo annually. Should this proposal be implemented, clerks would have to vacate the judgement as well as submit a request to the DMV to remove the conviction from the defendant’s driver’s license. At a process time of 10 minutes each, this is an annual additional cost of \$10,256 to process these changes. Additionally, approximately 30 percent of defendants who have been granted a trial de novo do not appear at their new hearing. Thus, under this proposal, it would take our court another additional 10 minutes to restore the judgement that it had recently vacated, as well as reapply the conviction on the defendant’s driver’s license. Further, this identical staff process would be performed for cases where defendants did appear for their trial de novo and were found guilty. This work, including the potential duplication and triplication, would equate to another additional annual cost of \$10,256 to the court.</p> <p><u>The Rule would read as follows:</u> When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time permitted, courts may</p>	<p>Response: The committees agree to revise the rule as recommended. The committees are sensitive to the administrative costs of the circulated proposal. To reduce costs, courts may consider delaying reporting of a conviction at a trial in absentia until after the time permitted for a trial de novo has passed. Additionally, the committees may consider standardizing forms and procedures for trials in absentia in the future.</p>

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Commentator	Position	Committee Response
	<p>require the defendant to deposit bail.</p> <p><b>Rule 4.106(g)</b></p> <p>Revising the language from “to be heard on the inability to pay” to “for a determination of ability to pay” would allow for a paper petition and review process rather than require an in- person hearing. In-person hearings would require additional staff and judicial resources. Specifically, our Court estimates that it would process around 30,000 annual hearing requests, which would take around two minutes each to process. This is an annual additional cost of \$342,281 for our staff to process these requests. Rather, we believe that a paper petition and review process is sufficient.</p> <p><u>The Rule would read as follows:</u> Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity for a determination of ability to pay.</p> <p><b>Advisory Committee Comment Subdivision (a)</b></p> <p>The language, “and been released for a signed promise to appear” should be stricken because only applying this rule to signed promises to</p>	<p>Response: The committees decline to accept this suggestion in order to ensure that due process principles are protected. If the defendant and the court are mutually agreeable to a written petition, courts are encouraged to utilize written petitions.</p> <p>Response: The committees agree with this suggestion. Several commenters expressed concerns about this advisory committee comment.</p>



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	Commentator	Position		Committee Response
			<p>appear would exclude other citations, such as those for red light camera enforcement.</p> <p><u>The Rule would read as follows:</u> The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear citation, and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required.</p> <p><b>Advisory Committee Comment Subdivision (g)</b></p> <p>The language, “unless requested by the defendant or directed by the court” should be stricken because requiring a hearing for every request would require additional staff and judicial resources. Specifically, our Court estimates that it would process around 30,000 annual hearing requests, which would take around two minutes each to process. This is an annual additional cost of \$342,281 for our staff to process these requests. Rather, we believe that a paper petition and review process is sufficient. Rather, we believe that a paper petition and review process is sufficient.</p> <p><u>The Rule would read as follows:</u> Before notifying the DMV, the court must provide the defendant with notice regarding the right to request an ability-to-pay determination and with instructions on how to request that</p>	<p>The language “and been released for a signed promise to appear” has been deleted. The proposed rule is not intended to exclude red light citations.</p> <p>Response: The committees decline to accept this suggestion in order to ensure that due process principles are protected. If the defendant and the court are mutually agreeable to a written petition, courts are encouraged to utilize written petitions.</p>

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			<p>determination. A hearing is not required.</p> <p><b>Rule 4.107</b></p> <p>Revising the language from “courtesy” to “reminder” removes the contradictory language between “mandatory” and “courtesy”.</p> <p><u>The Rule would read as follows:</u> Mandatory reminder notice-traffic procedures</p> <p><b>Rule 4.107(a)</b></p> <p>Revising the language from “courtesy” to “reminder” removes the contradictory language between “mandatory” and “courtesy”.</p> <p>The language, “or to the defendant’s last known address before the initial appearance,” should be stricken because the Court does not have a way to verify the defendant's last known address.</p> <p><u>The Rule would read as follows:</u> Mandatory reminder notice</p> <p>Each court must send a mandatory “reminder notice” to the address shown on the <i>Notice to Appear</i>.</p> <p><b>Rule 4.107(b)</b></p>	<p>Response: The committees agree and have changed the name to “reminder notice.”</p> <p>Please see the response above.</p> <p>Response: The committees have changed the language to state “unless the defendant otherwise notifies the court of a different address.”</p>

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	Commentator	Position		Committee Response
			<p>Revising the language from “courtesy” to “reminder” removes the contradictory language between “mandatory” and “courtesy.</p> <p><u>The Rule would read as follows:</u> Minimum information in reminder notice</p> <p>In addition to information obtained from the Notice to Appear, the reminder notice must contain at least the following information: ....</p> <p><b>Rule 4.107(c)</b></p> <p>Revising the language from “courtesy” to “reminder” removes the contradictory language between “mandatory” and “courtesy.</p> <p><u>The Rule would read as follows:</u> Additional information in reminder notice</p> <p>Courts may provide additional information in the reminder notice, as appropriate, including the following: ....</p> <p><b>Rule 4.335(C)(2)</b></p> <p>Adding the language “initial” and revising the language from “at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program” to “up until the date that the fine is due” would</p>	<p>Please see the response above.</p> <p>Please see the response above.</p> <p>Response: Vehicle Code section 42003(e) states that a defendant may petition the court for an ability-to-pay determination “[a]t any time during the pendency of the judgment” based on changed circumstances, suggesting an initial determination by which the alleged “changed circumstances”</p>

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			<p>clarify that Rule 4.335(c)(8) appears to allow for subsequent ability-to-pay determinations.</p> <p><u>The Rule would read as follows:</u> A defendant may request an initial ability-to-pay determination up until the date that the fine is due.</p> <p><b>Rule 4.335(C)(8)</b></p> <p>Adding the language “or if it is past the due date for the fine;” revising the language from “based on” to “where there are;” and adding the language “consistent with Vehicle Code section 42003(e)” is consistent with 4.335(C)(2) and VC42003(e).</p> <p><u>The Rule would read as follows:</u> If a defendant has already had an ability-to-pay determination, or if it is past the due date for the fine, a defendant may request a subsequent ability-to-pay determination only where there are changed circumstances consistent with Vehicle Code 42003(e).</p> <p><b>Rule 4.335(C)(9)</b></p> <p>Adding the new language we propose for subdivisions (A) and (B) would clarify the instances in which a judicial officer may deny a request for an ability-to-pay determination, order no further proceedings, and order that a case be referred to collections.</p>	<p>may be measured. The statute contemplates that this initial determination would occur at the time of adjudication when the court renders judgment: section 42003 provides that the court will consider the defendant’s ability to pay, upon request of the defendant “at adjudication” and will advise the defendant of this right “at the time of rendering judgment.” (Veh. Code, § 42003(c) [“In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall consider the defendant’s ability to pay,” italics added]); <i>id.</i>, § 42003(e) [“The court shall advise the defendant of this right at the time of rendering the judgment,” italics added].)</p> <p>Nevertheless, it is foreseeable that a court might adjudicate the case and render judgment in the defendant’s absence. (See, e.g., Veh. Code, § 40903.) Proposed rule 4.335 would account for such variation in practice while staying true to the letter and spirit of section 42003—a defendant would receive one ability-to-pay determination, upon request, and would be eligible for a second only upon a showing of changed circumstances.</p> <p>Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination during the pendency of the judgment, and this rule is modeled on section 42003, the committees have removed this provision from the proposal.</p>

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	Commentator	Position		Committee Response
			<p>The Rule would read as follows: ... (A) The defendant has the ability to pay; (B) There are no changed circumstances; ....</p>	
16.	<p>Superior Court of California, San Mateo County By Elizabeth Evans Chief of Operations</p>	N/I	<p>Proposed Rules 4.106, 4.107, and 4.335 aim to offer relief to defendants facing high traffic fines without the financial resources to pay their court ordered debt. We believe that the core issue is high traffic fines and the proposed Traffic Rules add workload and costs to courts while failing to address the problem of high fines. Is imposing high fines and then incurring the court administrative costs to reduce those fines a good use of public funds? While we question the philosophical soundness of the proposed traffic rules, San Mateo’s response focuses on the budget impact and the cost of providing the needed additional staff resources needed to implement the rule provisions. Proposed Rules 4.106, 4.107, and 4.335 will likely increase the Traffic Clerk’s Office, Courtroom, and Judicial Officer workload. The proposed rules will likely result in an increased number of defendants submitting written petitions for relief. An increased correspondence workload would strain an already under resourced traffic court that has sustained significant budget cuts in the last five years. Budget cuts have resulted in shortened office and phone hours in the Traffic Clerk’s Office. Since 2012, the Clerk’s Offices closes at</p>	<p>The committees appreciate the court’s input.</p> <p>Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.</p> <p>Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.</p>

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	Commentator	Position		Committee Response
			<p>2:00 p.m. each day to give clerks time to process paperwork and complete data entry. With the current workload, the court lacks the resources to restore office hours to 400 p.m. An increased clerk workload is unsupportable with the current budget allocation. We project an increased correspondence workload and request for hearings resulting from the proposed rule changes will require additional clerk positions, a commissioner position, additional facility space, and additional postage costs. There are currently remedies for defendants to seek relief based on financial hardship. We respectfully submit that adding new administrative procedures to augment what is currently available adds significant costs to courts without a commensurate increase in funding.</p> <p><b>Proposed Rule 4.106 Regarding Failure to Pay</b> Proposed Rule 4.106 adds an additionally and potentially burdensome administrative layer to the process of defendants seeking relief from the court. Most of these types of remedies are already available to defendants who make a court date or write a letter to the court and present appropriate evidence and information to support their request. Currently the Traffic Clerk’s office processes approximately 10,800 pieces of correspondence per year and the correspondence workload requires 1 full time clerk. Last year the court imposed civil assessments on 13,272 Vehicle Code cases after</p>	

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			<p>the defendant had received a Notice of Bail and a subsequent Failure to Appear and/or Pay Notice. If 50%, or 6,600 defendants, submit written petitions to have their civil assessment vacated, the correspondence workload would increase dramatically. We estimate the court would require an additional 1-1.5 full time positions to process the additional correspondence workload. The annual additional cost for 1.5 full time clerks is approximately \$159,000.</p> <p>Notwithstanding our serious concerns regarding the potential increase in workload and resulting budgetary impact, If proposed Rule 4.106 is enacted, we suggest the following edits:</p> <ol style="list-style-type: none"> <li>1. On page 10, section (d), language should be added in the title to clarify that this only pertains to “unadjudicated cases”. Also, under (d)(1), language should be added to clarify that trial in absentia cases are excluded since those are considered convicted/adjudicated cases.</li> <li>2. On page 10, section (e)(1), we suggest the following statement be revised as indicated in red: "When a defendant fails to pay a fine or make a payment</li> </ol>	<p>Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated it applied in unadjudicated cases. However, several commenters wanted further clarification that this subdivision applied only in unadjudicated cases. The language of this subdivision has been changed, except that the committees decline to revise the rule to state that trial in absentia cases are excluded because trial in absentia convictions are convictions and adjudicated cases.</p> <p>Response: There were several comments expressing concerns about the phrase “modify or vacate the judgment.” The committees have revised the rule to state “modify the payment</p>

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			<p>under an installment plan as provided in section 1205 of Vehicle Code sections 40510.5, 42003, or 42007, <b>due to a change in financial circumstances</b>, the court must permit the defendant to appear by written petition to <b>request the court to consider ability to pay to determine whether to modify the judgment and/or current payment plan</b>, or the defendant may request or the court may direct a court appearance."</p> <p>3. On page 10, section (e)(4), we suggest the changes in red: "If the defendant requests to modify <del>or vacate</del> the judgement based on an inability to pay....."</p> <p>4. On page 11, section (g), language should be added to clarify that the notice to the defendant of the opportunity to be heard on the inability to pay can be provided as early as in the courtesy notice.</p> <p><b>Proposed Rule 4.107 Mandatory Courtesy Notices</b> The provision that notices be mandatory may lead to arguments to dismiss a matter where a courtesy notice was not sent and/or received.</p>	<p>terms" to address these concerns.</p> <p>Response: There were several comments expressing concerns about the phrase "modify or vacate the judgment." The committees have revised the rule to state "modify the payment terms" and deleted "or vacate the judgment" to address these concerns.</p> <p>Response: The committees agree with this suggestion. This subdivision has been revised to state: "This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant."</p> <p>Response: The committees agree with this recommendation. To address this concern, the committees have revised the proposal to provide that the failure to receive a reminder notice does</p>



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			<p>This puts courts in a difficult position especially concerning failures to appear and the signed promise to appear that is part of the ticket as this promise is what many judicial officers use to determine if the defendant received valid notice of their court date and willfully failed to appear. The mandatory notice requirement could essentially render the promise to appear obsolete as it would make the court responsible for ensuring the defendant's appearance by sending them a courtesy notice.</p> <p>If proposed Rule 4.107 is enacted to mandate courtesy notices, the language should clarify that <i>not receiving</i> a courtesy notice does not relieve the defendant of the obligation to appear and/or address the ticket by the promise to appear date on the citation.</p> <p><b>Proposed Rule 4.335 Consideration of a Defendant's Ability to Pay</b></p> <p>San Mateo currently provides the opportunity for the defendant to request an ability to pay determination and the Commissioners consider requests in court during the arraignment calendar. The proposed Rule 4.335 provision for requiring the court to permit the defendant to request an ability to pay determination in writing would create a significant workload increase for the Clerk's Office and potentially San Mateo County Revenue Services, if the determination responsibility is delegated to them. Moreover, requests for review by a judicial officer of the decision regarding the</p>	<p>not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear.</p> <p>Response: Under this proposal, defendants may still make requests orally during arraignment or other calendars. And the committees have removed the subdivision on delegation from the proposal.</p>

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	Commentator	Position		Committee Response
			<p>ability to pay determination (whether by a court hearing or written petition) would increase the courtroom and commissioner workload.</p> <p>San Mateo processes over 100,000 traffic matters each year. If only 10 percent of the defendants with unpaid traffic fines request an ability to pay determination, the number of requests would be 10,000. Without factoring the added complexity of determining ability to pay, the simple processing of paperwork would require additional two full-time clerks. The cost of two additional full-time clerks would be approximately \$211,976 per year.</p> <p>If the ability to pay determination responsibility was delegated to San Mateo County’s Revenue Services Department, the cost would be considerably higher. The County’s Revenue Services agency currently charges \$50 per case to formally determine ability to pay. If 10 percent, or 10,000 defendants annually submit a written petition for an assessment of their ability to pay, and Revenue Services charges \$50 per case, the additional cost could be \$500,000, annually. If the criteria for assessing ability to pay in traffic matters is simpler and the cost is less, there would still be a substantial additional budget impact. If 10,000 defendants applied for an ability to pay determination at \$25 per case, the budget impact would be \$250,000.</p>	<p>Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended an extended implementation date for the rule proposals.</p> <p>Response: The committees have removed the proposed subdivision on delegation from the proposal.</p>

**SP16-08**

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			<p>Setting aside the issue of the cost of a formal ability to pay petition and resulting determination, we are concerned about the proposed rule’s provision that the ability to pay determination responsibility be delegated to clerks. We do not consider determining a defendant’s ability to pay a ministerial task. An ability to pay determination currently involves judicial discretion and we do not think clerks should be put in the position of exercising discretion, even given the criteria listed under section (c)(4) of the proposed rule.</p> <p>Regarding the defendant’s right to a review by a judicial officer of the determination made by the clerk or the collection agent, the proposed rule is not clear as to whether that would require a court hearing or whether the review can be done by way of petition and written decision. Regardless, if the defendant exercises their right to a judicial officer review, this will create additional staff and judicial time in handling these reviews. Currently there is a one to two month wait to obtain a Traffic hearing. If only 1 percent of defendants per year request an ability to pay hearing, separate from the arraignment, this would add an additional 1,000 matters to the commissioner workload. This would strain the already full calendars and lengthen the time it takes to obtain a court date. A several month delay in obtaining an arraignment hearing impedes defendants’ right to swift and fair</p>	<p>Response: This proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have removed the proposed subdivision on delegation from the proposal.</p> <p>Response: Because the committees decided to remove the provision on delegation from the proposal, they also removed the provision on judicial review of any determination made by the clerk or county revenue collections agency. They have also added language clarifying that the judicial officer has the discretion to conduct the review of written requests on the written record or to order a hearing.</p>

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			<p>justice.</p> <p>Even if a hearing is not required for the judicial review, an increase in written petitions for judicial review would nevertheless increase the commissioner workload exponentially. We estimate that the increase in correspondence would make it necessary to set aside a half or full day per week for the commissioner to rule on written correspondence. Given the other assignments and calendars that our commissioners hear, an increased Traffic workload would require additional commissioner resources. If the court were to hire a half-time commissioner to hear the additional calendar matters and/or review written petitions, the budget impact would be approximately \$170,000 annually, including the cost of courtroom clerk support.</p> <p>In summary, if these rules are approved, the cost to fully support a formal process for financial petitions, assessments, and review hearings is conservatively estimated at \$1 million to San Mateo. Assuming this funding is allocated according to WAFM, the statewide appropriation would have to total at least \$53.7 million. While this analysis did not address the economics or cost benefit analysis of the proposed rule changes, just San Mateo's cost estimate alone suggests that spending \$1 million in Traffic to implement a more formal financial assessment process on perhaps 10 percent of the traffic cases does not make budgetary sense. In</p>	<p>Please see response above.</p>

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			<p>FY15-16, the San Mateo Superior Court spent a little over \$1.6 million on its reduced Traffic Division. The needed budget to implement these proposed rule changes represents a 64 percent increase. A 64 percent budget increase for traffic to address the needs of 10 percent of the cases does not make budgetary sense. Given that Trial Courts are underfunded by 25 percent to 35 percent statewide, that total estimated appropriation of \$53.7 million might be better spent on other areas of the courts.</p> <p>Given the magnitude of the additional staffing needs, San Mateo could not implement the proposed traffic rules without additional funding. If we receive the necessary funding to add staff and commissioner resources, we would need a minimum of four months to implement the proposed rules.</p>	
17.	<p>Superior Court of California, Sonoma County By Hon. Raima H. Ballinger Presiding Judge</p> <p>Jose Octavio Guillen Court Executive Officer</p>	N/I	<p>Thank you for the opportunity to provide input on whether, or in what form, to adopt proposed Rules of Court 4.106, 4.107, and 4.335, relating to infraction cases. Sonoma County Superior Court would initially observe that the proposed rules appear to be a good faith effort to remediate the effect current infraction fines (meaning the total fine, fee and assessment amounts) have on a particular segment of the population, those with diminished ability, or inability, to pay. The laudable goal is to relieve individuals of consequences that seem</p>	<p>The committees appreciate the court's input.</p>

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			<p>disproportionate to an infraction violation of the law, such as being rendered unable to pay rent or buy food, because funds for a traffic ticket must be diverted from that person's budget. Or in some cases, making a choice between paying for those necessities, and risking the loss of a driving privilege through suspension because the infraction fine is not paid. This Court's position is that the true solution needed to address this concern is a reduction in the amount of the fines generally. The purpose of an infraction penalty is generally regulation. As stated in <i>In re Jennings</i>, (2004) 34 Cal.4th 254:</p> <p>“Under many statutes enacted for the protection of the public health and safety, e.g., traffic... criminal sanctions are relied upon even if there is no wrongful intent. <b>These offenses usually involve light penalties</b> and no moral obloquy or damage to reputation. Although criminal sanctions are relied upon, <b>the primary purpose of the statutes is regulation</b> rather than punishment or correction. The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement.” ’ ’ ’ ’</p> <p>(Jorge M., supra, 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.)</p> <p><i>Id.</i> at 267 (emphasis added). A fine of \$238, the <i>minimum</i> fine for speeding and lowest moving violation fine amount, added to the cost of traffic school totals up to close to \$350, an</p>	

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			<p>amount not generally seen by people as a “light” penalty. The infraction penalty structure should be based on reasonable fines for the conduct to be deterred. The need for fundamental revision of the traffic fine structure is beyond the Judicial Branch's ability to effect. Rather, it lies in the hands of the State Legislature. Any efforts to mitigate the effects of the current out of proportion fine structure by the Judicial Branch through its rule making power amount to makeshift solutions to dissipate the foreseeable effect of the fines as currently set by law. The Sonoma County Superior Court would urge the Committees to reconsider proposing any Rules or other efforts to relieve the State Legislature of the pressure necessary to make changes where they are most appropriate -the fine amounts set by the State.</p> <p>The above concerns are also part and parcel of the current funding structure supporting court operations around the state which is based on fluctuating and inconsistent revenue streams tied to such things as fines collected and cases filed. As the Committees are aware, it is of great importance to every court, and all residents of the State who wish to have ready and consistent access to justice, that there be a predictable and stable income stream for court operations, such as an allocation from the General Fund. This Court’s view is that a discussion about the infraction fine structure is necessary and part of a larger discussion about how state services, and</p>	<p>Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.</p>

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			<p>judicial access in particular, are funded.</p> <p>In recognition that the Judicial Branch may move forward with some rule enactment despite the above identified issues, comments specific to the proposed rules are included below. Generally, this Court would reject as an underlying principle the following statement in the Invitation to Comment that "...the amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability ...". The principle that the amount of a fine should be based on a person's means has the corollary that the fine for a very wealthy person should be proportionately increased. A system of punishment based on the status of the defendant is repugnant to the United States system of justice.</p> <p>As to Proposed Rule 4.106, the language should make clear that the civil assessment may be imposed up to a maximum amount, or a reduced amount, or vacated all together. We recommend the following modification, in bold, to clarify:</p> <p>When a court notifies a defendant that a civil assessment will be imposed for failure to appear or pay under Penal Code section 1214.1(b), the notice must inform the defendant of his or her right to petition that the civil assessment be vacated <b>OR REDUCED</b> for good cause and must include</p>	<p>Response: The committees agree that this section needs clarification. The statute is clear that if good cause is shown, a judicial officer must vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (<i>Id.</i>, § 1214.1(a).) The rules, as circulated, intended to highlight this distinction, but several commenters wanted to specify reduce in this subdivision. Proposed rule 4.106(c)(1) now includes "reduce" along with "vacate."</p>



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			<p>information about the process for vacating <b>OR REDUCING</b> the assessment.</p> <p>When a court imposes a civil assessment for failure to appear or pay, the defendant may request -- without paying any bail, fines, penalties, fees, or assessments -- that the court vacate <b>OR REDUCE</b> the civil assessment because the defendant had good cause for failing to appear or pay. Even absent a showing of good cause, the court may consider other factors in determining whether to impose a civil assessment and, if so, the amount of the civil assessment.</p> <p>That portion of this proposed rule that allows for a hearing on cases referred to collections, but not yet adjudicated, should be clarified to exclude cases with a prior adjudication. This Court is aware that historically, a number of courts around the state have sent cases to collections that are unadjudicated. They have then refused to allow defendants to be heard and proceeded as if a conviction occurred. This Court agrees that this is generally violative of due process and such practice should be ended, or the defendant given an opportunity to address the ticket in a substantive way despite a referral to collections. However, where a court has a comprehensive trial in absentia program, as allowed by Vehicle Code section 40903, with procedural due process safe guards such as notice of the ruling and the ability to address the</p>	<p>Response: The committees agree this section needs clarification. Proposed rule 4.106(d)(1), as circulated, stated it applied in unadjudicated cases. However, several commenters wanted more clarification that this subdivision only applied in unadjudicated cases. The language of this subdivision has been changed to address these concerns.</p>

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			<p>case on calendar, this rule should not undo the finality of that process. We would propose the following modification:</p> <p>When a court refers unpaid bail to a comprehensive collection program as delinquent debt, the defendant may request to schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount, <i>unless there has been a prior adjudication of guilt.</i></p> <p>This Court recommends deleting that part of the proposed rule which allows a defendant to request a modification of the judgment. The proposed language “[w]hen a defendant fails to pay under an installment plan, the defendant may request modification of the judgment,” is contrary to the important judicial principle of finality of judgments. If not deleted, perhaps it could be redrafted to state "modification of how the sentence is to be served" or "judgment is to be performed.”</p> <p>As to the final portion of the proposed rule, this Court's position is that it will severely and negatively impact the court's ability to enforce its orders. If this process is kept, it is suggested the rule be modified as follows:</p> <p>When a defendant has failed to pay a fine or installment of bail, a court must provide the defendant with notice and an opportunity to be</p>	<p>Response: There were several comments expressing concerns about the phrase “modify or vacate the judgment.” The committee has revised the rule to state “modify the payment terms” to address these concerns.</p> <p>Response: The committees agree with this suggestion. This subdivision has been revised to state: “This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.”</p>

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			<p>heard on ability to pay before notifying the Department of Motor Vehicles (DMV).1. <b><i>This notice may be provided at any time, including with the courtesy notice.</i></b></p> <p>As to Rule 4.107 regarding mandatory “courtesy” notices, it would be appropriate to now refer to the notices as something other than a “courtesy” notice if they are mandated. Perhaps appearance notices, or traffic resolution notices.</p> <p>As to Rule 4.335 and ability to pay determinations, please see the individual comments as to each portion below:</p> <p>Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions available on how to request that determination; - <b><i>This notice may be provided at any time, including with the courtesy notice.</i></b> .</p> <ul style="list-style-type: none"> <li>▪ A defendant may request an ability-to-pay determination at or after adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to collections; - <b><i>This should be limited to pre-adjudication. If not, there should be some reasonable outside time limit for this type of review post adjudication. Otherwise, there will be, again, no finality to the court's</i></b></li> </ul>	<p>Response: The committees agree and have changed the name to “reminder notice.”</p> <p>Response: The committees agree. They have added an advisory committee comment to rule 4.335(b) to clarify that the notice of the right to request an ability-to-pay determination may be provided on the reminder notice required by rule 4.107, the notice of civil assessment required by Penal Code section 1214.1, the court’s website, or “any other notice provided to the defendant.” Proposed response: The committees decline to pursue this recommendation because Vehicle Code section 42003 does not contemplate any time restrictions on making this request while the judgment remains pending. Instead, it contemplates that the court will consider a defendant’s ability to pay when the defendant appears “for adjudication” and “[a]t any time during the pendency of the judgment.” (Veh.</p>

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			<p><i>orders. CCP section 473 has a six month limit to seek relief based on mistake, surprise, excusable neglect or inadvertence; this could be seen as an analogous standard and the same time period applied.</i></p> <ul style="list-style-type: none"> <li>▪ The court must permit the defendant to make the request in writing, unless the court directs an appearance;</li> <li>▪ The court may delegate the initial determination of the defendant's ability to pay to a clerk or other county revenue collections agency using <b>specified factors; it is not proper to put a clerk in the position of exercising discretion. Absent a standardized state process similar to the fee waiver application, this will pose problems. However, using the same structure as a request or fee waiver could be a good solution.</b></li> <li>▪ A defendant has the right to a review by a judicial officer if requested in writing within 20 calendar days of the sending of the notice of the decision; <b>What if the ability to pay determination is made in person by the judicial officer (such as at arraignment or trial) -is there any review of that determination and what are the time</b></li> </ul>	<p>Code, § 42003(c), (e).) The time periods stated in proposed rule 4.335 mirror the statute.</p> <p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant’s ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.</p> <p>Response: Since the committees have removed the subdivision on delegation, the committees have also removed the subdivision relating to review by a judicial officer.</p>

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			<p><i>standards if so?</i></p> <ul style="list-style-type: none"> <li>▪ Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete community service, suspend the fine in whole or in part, or offer an alternative disposition; - <i>What would an example of an alternative disposition be? Dismissal? Or?</i></li> <li>▪ The defendant may request an ability-to-pay determination at any time before the final payment date or completion date; - <i>Again, this should before-adjudicate ion only. If not, some reasonable outside time limit set such as six months.</i></li> <li>▪ If a defendant has already had an ability-to-pay determination, a defendant may only request a subsequent ability to pay determination based on changed circumstances; - <i>In the same case, or for any new cases or a pre-determined period of time?</i></li> </ul>	<p>Response: This option was introduced to preserve judicial discretion and provide room for courts to be creative in developing alternative options and local programs. For example, a court might form an infraction diversion program.</p> <p>Response: The committees decline to pursue this suggestion. This subdivision clarifies that the ability-to-pay provisions apply to installment plans and community service up until the final payment or completion date. It is based on Vehicle Code section 42003, which does not provide for pre-adjudication ability-to-pay determinations or any time restrictions while the judgment remains pending.</p> <p>Response: The committees agree this subdivision needs clarification. This subdivision is intended to allow for additional ability-to-pay determinations in the same case, but only if the defendant makes a showing of “changed circumstances.” The committees have revised the proposal to clarify that the “changed circumstances” standard applies if the defendant has already had an ability-to-pay determination “in the case.” Please see the response above to the suggestion that the rule provide for time restrictions.</p>

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			<p>▪ The court may deny the defendant's request for an ability-to-pay determination if the court determines that an unreasonable amount of time has passed or the defendant has made an unreasonable number of requests. - <i>In the same case, or for any new cases or a pre-determined period of time?</i></p> <p>This Court would also provide the following information regarding the potential fiscal impact should the proposed rules be enacted. Ability to pay hearings are presently authorized in the Vehicle Code and this option is regularly exercised in this County. The proposal to vastly expand this existing power by creating new layers of administrative procedures will lead to a substantial increase in workload at the local court level and greater costs. It does not appear that there are any additional resources or funds that will be made concurrently available to support these new trial court obligations. One example of immediate costs to this Court will be compliance with the new notice requirement regarding an ability to pay determination. In our Court alone written notices would be mandated in 101,014 cases. The approximate cost of postage is \$43,000. The cost for conducting hearings, assuming only a fifty percent rate of request, and a five minute hearing, is estimated at approximately \$872,761 annually. Sonoma County is presently classified as a donor court under the WAFM and will likely have its immediate annual budget reduced by \$400,000</p>	<p>Response: Because Vehicle Code section 42003 contemplates that a defendant may request an ability-to-pay determination while the judgment remains pending, and this rule is modeled on section 42003, the committees have removed this provision from the proposal.</p> <p>Response: The committees recognize that these rules will increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. The committees have recommended extending the implementation date.</p>

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			<p>this year. The additional impact of the costs of implementation of these rules would be devastating to the court's ability to continue to employ personnel, operate courtrooms, and provide services to the community at current levels.</p> <p>The proposed rules are thoughtful and reflect a great deal of consideration and effort by the Committees. They appear well intended in their attempt to mitigate the above identified problems. However, this Court would urge the Committees to look to the State Legislature for the much more comprehensive solution that can only come from there, and to not enact the proposed rules at this time. Thank you for the opportunity to have input on the proposed amendments and for consideration of this Court's position.</p>	
18.	<p>Superior Court of California, Sonoma County By Hon. Anthony Wheedlin Commissioner, Traffic Division</p> <p>Jose Octavio Guillen Court Executive Officer</p>	N/I	<p>Our Court supports both procedural due process and access to justice for infraction defendants. Our Court shares the widespread concern that the California fine structure and collection procedures have resulted in the suspensions, statewide, of millions of California Driver's Licenses for failure to pay infraction fines. The impact is most pronounced on those with financial hardship.</p> <p>The legislated fine structure converts a \$100 base fine into a \$490 bail due and a "failure to</p>	<p>The committees appreciate the court's input.</p>

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			<p>pay or appear” usually adds \$300. The legislature, regrettably, uses infraction fines as revenue and apportions some of that money to the state DNA data bank and courthouse construction fund rather than to regulate and promote traffic safety.</p> <p>Superior Courts have routinely sent cases to collection that were not adjudicated and then denied defendants access to any judicial hearings unless the original bail was posted. This procedure has raised due process concerns. Legislative and judicial change is clearly needed. Our view is that the fundamental unfairness, especially for those of limited financial means, is that infraction fines are too high. If fine amounts were reasonable to begin with, focusing on regulation and safety rather than revenue, public compliance, we believe, would increase significantly.</p> <p>Our Court agrees with the Traffic Advisory Committee that current Court infraction procedures unfairly limit access and raise due process concerns. While the proposed amendment to Rule 4.105 and the proposed addition of Rules 4.106, 4.107; and, 4.335 may help with those concerns, the proposed amendments do not address the fundamental problem and will, if implemented as proposed, burden and likely overwhelm traffic trial courts and traffic staff.</p>	



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			<p>If adopted the proposed amendments could generate the following scenario: a defendant with a seatbelt case could request a Trial by Declaration; then request a Trial de Novo; and, if the judgment is not paid and a civil assessment imposed, request a hearing to vacate the assessment; then request an Ability to Pay Hearing, and if an installment plan were ordered, could then request a post judgment adjustment based on change in circumstances, the seatbelt ticket has a base fine of \$25, a total bail of \$162.</p> <p>While too little due process is unfair to defendants, too much due process would be an unfair allocation of the Court's time, denying or significantly delaying access to the Court for other defendants.</p> <p>Our view is that the proposed initial ability to pay determinations could be “delegated to a clerk” is unworkable. Specifically, a clerk would have to review and consider information from one of many potential documents and make an on the spot determination. This process would occur while others are in line. This would further subject the clerk to making a discretionary call while in a face to face situation with the defendant.</p> <p>Our concluding general comment is that, yes, access to courts and appropriate due process for infraction defendants both need judicial</p>	<p>Please see response below.</p> <p>Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.</p>

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			<p>revision; however, the proposed rules go too far in creating additional procedures that would burden the trial courts and trial staff while still not dealing with the fundamental unfairness of high fines.</p> <p><b><u>Specific Comments</u></b></p> <p><b>Amendment to Rule 4.105</b></p> <p>(d) Our Court <b>supports</b> the addition to (d) regarding the website for self-help information.</p> <p><b>Rule 4.106</b></p> <p>(c) Our Court <b>opposes</b> elements of Section C as follows:</p> <p>Change the language to “A notice of civil assessment.....inform the defendant.....of right to Petition the Court to review the Civil Assessment and must include.....about the process for filing a Petition with the Court for that review.</p> <p>(2) This subsection appears covered by 4.335 and/or 1214.1.</p>	<p>No response necessary.</p> <p>Response: The committees decline to accept this suggestion. The committees drafted proposed subdivision (c)(1) to inform defendants of their rights under the statute. The commenter’s suggested language would not notify defendants that they may request that the civil assessment be vacated for good cause.</p> <p>Response: Although the commenter correctly states that the defendant’s rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for vacating or reducing the civil assessment. This is a common and appropriate purpose for rules of court.</p>

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			<p>(3) <b>Supported.</b> No response necessary.</p> <p>(4) <b>Supported.</b> No response necessary.</p> <p>(5) Upon a showing of good cause, the Court shall vacate the assessment. Response: In drafting rules of court, the term “must” is preferred over “shall.”</p> <p>(6) If Court discretion is applicable here; it should also apply to (2). Response: The statute is clear that if good cause is shown, a judicial officer must vacate (as opposed to reduce) the civil assessment. (Pen. Code, § 1214.1(b).) If good cause is not shown, a judicial officer may still vacate or reduce the civil assessment in his or her discretion. (<i>Id.</i>, § 1214.1(a).)</p> <p>(d) (1) <b>Supported.</b> No response necessary.</p> <p>(2) <b>Oppose-</b> as the first sentence is written, lacks a time frame. The second sentence as written, lacks clarity. Response: The committees decline to specify a time frame, as there does not appear to be a time limit for a defendant to make such a request.</p> <p>(3) <b>Supported except that this “unlikely to appear” standard is unclear.</b> Response: The committees decline to provide more guidance on how to interpret the phrase “unlikely to appear.” This matter falls within judicial discretion.</p> <p>(e) <b>Oppose-</b> in its entirety. This proposal undermines the finality of judgments and would specifically expand the workload of traffic staff and the Court. Our Court does allow a letter to the Judicial Officer seeking extensions of time or possible conversion to payment plan or Response: There were several comments expressing concerns about the phrase “modify or vacate the judgment.” The committee has revised the rule to state “modify the payment terms” to address these concerns.</p>

**SP16-08**

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	Commentator	Position		Committee Response
			<p>community service; however, as proposed the judicial labor necessary to meet this open ended proposal would be substantial.</p> <p>(f) <b>Support-</b> (Our Court practice does not require bail)</p> <p>(g) <b>Oppose-</b> While our County does not report under these code sections, the proposed amendment would create an additional hearing.</p> <p><b>Rule 4.107</b></p> <p>(a) <b>Support</b></p> <p>(b) <b>Support.</b> - (1)-(6), (8)</p> <p>(7) <b>Oppose.</b> Our Court approves this additional hearing. We have a robust and flexible community service program, working exclusively with non-profits. Our program can accommodate disabled, non-English speaking, and out of county defendants. For FY 15-16, of the 6,838 defendants who appeared on the arraignment calendar, 1,497 requested community service. Of those referred to community service 962 defendants completed their sentence providing more than 28,000 community service hours to 152 Sonoma County non-profit organizations. Our history</p>	<p>No response necessary.</p> <p>Response: The notice and opportunity to be heard that are provided for in subdivision (g) are required before a court notifies the DMV under Vehicle Code section 40509(b) and/or 40509.5(b). Furthermore, a hearing is not required unless requested by the defendant or directed by the court.</p> <p>No response necessary.</p> <p>Please responses to 4.335.</p>

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			<p>with ability to pay hearings is that they are predictably uneven because evidence produced is inconsistent and defendants request “another chance” to bring the correct paperwork.</p> <p>(c) (1) Our Court makes available the community service alternative.</p> <p>(2) <b>Oppose.</b></p> <p>(3) <b>Oppose.</b></p> <p>(4) Specifically <b>oppose</b> as putting the clerk's in a position of too much authority.</p> <p>(5) <b>Oppose.</b></p> <p>(6) <b>Oppose</b> as written. Our Court always makes available community service and payment plan options. Our court views existing authority as allowing a Judicial Officer the authority to "suspend the fine in whole or in part" or to "offer an alternative disposition".</p> <p>(7) <b>Oppose.</b> Our Court presents at arraignment and on its web site information</p>	<p>No response required.</p> <p>No response required.</p> <p>Response: This rules proposal is not intended to eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this proposed subdivision from the proposal.</p> <p>No response required.</p> <p>Response: The committees agree that judicial officers have discretion to provide for payment on an installment plan, allow the defendant to complete community service in lieu of paying the total fine, suspend the fine in whole or in part, or offer an alternative disposition. The rule is designed to clarify this existing authority.</p> <p>Response: The proposed rule does not diminish the court’s existing discretion. A court is not</p>

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			<p>regarding community service and installment payment plans. Given the nature of our community service program, to add “ability to pay determination” would at best undermine the community service program. One could seek a lower fine and then have it converted to community service.</p> <p><b>Rule 4.335</b></p> <p>Oppose in its entirety. Again, our Court relies on its convenient, available, affordable Community Service Program. We believe this procedure would undermine that program. This procedure also proposes a clerk determination (initially) with a subsequent right to request judicial determination of ability to pay. To ask clerks to look at one of the eight documents listed or the “monthly income of 125 percent or less...” is not viable for clerk staff working a window with a line of people. As previously indicated, the clerk would need to make this determination while face to face with defendant. Assuming a clerk made the determination, the question becomes, then what? Certainly the clerk would not just lower the fine. Presumably, the matter would then need to be set for hearing on what outcome given that an “ability to pay determination” has been made. The vagueness, the lack of time standard, the delegation to a clerk are all of concern. Because this amendment contemplates an “ability to pay determination at any time before the final</p>	<p>necessarily required to lower the base fine amount. Rather, the court must make an individualized determination based on the defendant’s individual circumstances. So long as the manner and amount of paying the total fine is reasonable for each defendant, ordering community service in lieu of the total fine may an appropriate option.</p> <p>Response: Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this provision from the proposal. Instead, the committees have added an advisory committee comment, which provides that the court, in determining a defendant’s ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.</p> <p>Response: Under the proposed rules, in reviewing requests for an ability-to-pay determination, the court retains discretion to fashion the appropriate response after reviewing the facts of the case. The</p>

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	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
			<p>payment date...,” that means a defendant receiving another infraction violation could use that as a change of circumstance. That procedure would reward, in effect, continuing infraction violations. Accountability should not be undermined by due process procedures. Again, our practice is to allow a defendant with either community service or a payment plan to write a letter to the Judicial Officer and request for time to complete the sentence.</p>	<p>committees have added an advisory committee comment to clarify that the court may consider the defendant’s prior criminal history and the severity of the offense, among other factors.</p> <p>Response: Under the proposed rules, the court retains discretion to order community service in lieu of paying the fine under rule 4.335. This proposal also would not prevent a court from reviewing a request for more time to complete the sentence.</p>
19.	<p>Superior Court of California, Yolo County By Hon. David Rosenberg Presiding Judge</p> <p>Shawn C. Landry Court Executive Officer</p>	N/I	<p>Thank you for the opportunity to comment on the proposed Rules of Court related to infraction cases, including Rules of Court 4.106, 4.107 and 4.335. While in general Yolo Superior Court supports the Advisory’s recommendations, ultimately, the legislature should review and modify the current penalty structure and provide trial courts funding that is not generated by fees and penalties that many people are unable to pay. However, until the legislature does act, the proposed rules would provide some relief to those defendants who are caught in the system, unable to pay their fines and some who have lost the right to drive due to unpaid penalties and assessments.</p> <p><b>Amended rule 4.105 -</b></p> <p>We agree with requiring courts to provide links to <a href="http://www.courts.ca.gov/selfhelp-traffic.htm">www.courts.ca.gov/selfhelp-traffic.htm</a> on</p>	<p>The committees appreciate the court’s input.</p> <p>Response: The committees recognize the need for the Legislature to consider revising the fees and fines established by statute and address the issue of court funding.</p> <p>No response necessary.</p>

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			<p>their websites but courts should also provide more information online on local process and requirements. Providing additional information online makes it available to everyone, since most people have smart phones and/or access to the internet and do not have to have a permanent address in order to get information.</p> <p><b>Proposed rule 4.106 -</b></p> <p>We agree with several of the proposed changes to rule 4.106, however, we have concerns about a defendant requesting to schedule a hearing for modification of judgment after a case has been sent to collections unless there is good cause.</p> <p>If additional information is available online on the court's website and is on the courtesy notice (for those courts that already provide one) regarding the ability to pay hearings, failure to pay penalties and possible ramifications from the OMV, additional notice should not be required.</p> <p><b>Proposed rule 4.107 -</b></p> <p>We do not agree with requiring courtesy notices to be mandatory. Instead, more information should be available to defendants online on the courts' website, including case information, fine</p>	<p>Response: There were several comments expressing concerns about the phrase “modify or vacate the judgment.” The committee has revised the rule to state “modify the payment terms” to address these concerns. However, there does not appear to be anything in the statute requiring good cause for a defendant to modify the payment terms.</p> <p>Response: The committees agree with this suggestion. This subdivision has been revised to state: “This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.”</p> <p>Response: The committees recognize that implementation may increase costs to courts. However, the committees have decided that, on balance, the benefits outweigh the costs. To help</p>



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			<p>amounts, traffic school options, the option to request an Ability to Pay Hearing as well as the other penalties noted above. Further, a courtesy notice is just that, a courtesy but not necessary as the information on the citation indicates relevant information in most courts. If it does not, citations could be modified. A courtesy notice is duplicative and can often cause confusion. Violators should be directed to follow instructions on the citation.</p> <p>Requiring Notice would increase the cost to trial courts for mailing, vendor services, staffing for processing and modifications to case management systems.</p> <p>Relying on “courtesy notices” seem to be going backward rather than forward - since many courts are moving toward paperless and using technology to interface with the public, we should be making more information available online.</p> <p><b>Proposed rule 4.335</b></p> <p>We do agree that notice should be provided. Notice should be available online and should be on the original citation.</p>	<p>mitigate these costs, the committees have revised the proposal to expressly recognize that the reminder notices may be sent electronically by email or text message. They have also added an advisory committee comment identifying several possible ways courts may implement electronic notices. The committees have recommended an extended implementation date for the rule proposals.</p> <p>Please see response above.</p> <p>Please see response above.</p> <p>Response: The committees agree that notice of the right to request an ability-to-pay determination should be provided online. They have added an advisory committee comment to proposed rule 4.335(b) to clarify that the notice of the right to request an ability-to-pay determination may be provided on the reminder notice required by</p>

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			<p>proposed rule 4.107, the notice of civil assessment required by Penal Code section 1214.1, the court’s website, or “any other notice provided to the defendant.”</p> <p>The committees decline to pursue the suggestion to modify the Notice to Appear at this time because it is beyond the scope of the present proposal. Under rule 10.22, advisory bodies cannot present a new form to the Judicial Council for adoption without first circulating for public comment. This proposal has already been circulated for comment twice. The committees believe that it is important to move forward at this time with the adoption of the changes that are in the proposal. They may consider this suggestion in developing future proposals.</p> <p>Response: Vehicle Code section 42003(e) provides for an ability-to-pay determination based on changed circumstances “[a]t any time during the pendency of the judgment.” It does not require a showing of “good cause” or otherwise allow courts to restrict the defendant’s ability to make this request if the case has been sent to collections. The committees decline to pursue this suggestion as providing for additional restrictions in the rule may be inconsistent with statute.</p> <p>Response: This rules proposal preserves judicial discretion; it does not to require that the court provide any particular option to a defendant. To clarify that the court is not required to offer</p>
		<p>We agree that the defendant may request the ability to pay determination at any time before the final payment or completion date but if the request is after it has been sent to collections, there must be good cause to grant that request.</p>	
		<p>Many counties, including Yolo, do not have the ability to create and run community service programs to direct and track community service and report it to the court. Having a community</p>	

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			<p>service requirement without program oversight could overwhelm the limited volunteer options with requests and could result in unfulfilled community service orders.</p> <p>Infraction penalties should not be overly punitive and should fit the seriousness of the infraction. However, penalties should not be based solely on status. One must consider the ability to pay, but should not punish unequally those who do have the ability to pay.</p> <p>A defendant’s ability to pay should be determined using the similar system as the fee waiving request process or the amnesty program structure. If a defendant is below the poverty level or receiving public assistance, fines and fees may be reduced more significantly than those who do not meet those requirements. However regardless of how this is determined, penalties should be reduced - even substantially reduced - but not eliminate.</p>	<p>community service or installment plans, the committees have added the qualifying phrase “if available.”</p> <p>Response: The committees have added an advisory committee comment to clarify that the defendant’s ability to pay is not the only consideration that a court may consider in the exercise of discretion. The comment states that a court may also consider the defendant’s prior criminal history and the severity of the offense, among other factors.</p> <p>Response: The committees have added an advisory committee comment to specify that a court should consider whether a defendant is receiving public assistance or has an income below the poverty line in determining the defendant’s ability to pay.</p> <p>Response: Although a court may suspend the base fine in whole, it may not reduce any mandatory fees.</p>
20.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, Joint Rules Subcommittee	AM	<p><b>General Comments:</b></p> <p>1. The JRS <i>strongly</i> recommends that the effective date of the new and amended rules discussed in this proposal be changed to July 1, 2017 to provide the trial courts with</p>	<p>The committees appreciate the subcommittee’s input.</p> <p>Response: The committees have recommended an extended implementation date for the rule proposals.</p>

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			<p>additional time to successfully and comprehensively implement this and the other urgent traffic proposals. While the JRS appreciates the authoring committees adjusting their timeline to present at the October 2016 Judicial Council business meeting, trial courts will not know in advance the substance of the final rules until the Council vote. Thus, the trial courts would have only two months to implement, doing so would not actually give the courts two months for implementation, during a season when there are a significant number of court holidays and pre-arranged staff vacation.</p> <p>Accurate and comprehensive implementation will require more than two months for most trial courts and, especially so, for the smaller courts. An implementation period of less than two months creates significant challenges and burdens for courts of all sizes. For smaller courts, the following changes were specifically identified:</p> <ul style="list-style-type: none"><li>• Smaller courts do not have internal technology staff to assist in making changes to forms or case management systems. It would be costly to expect any vendors to quickly expedite any changes including necessary programming modifications.</li><li>• Small court management teams may only</li></ul>	<p>Please see response above.</p>

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			<p>consist of two to three individuals (at best) that need additional time to develop processes and appropriate training for staff in and out of the courtroom. Those same individuals are also responsible for attempting to work with technology vendors to implement changes on courtesy notices, programming, and in-house forms.</p> <ul style="list-style-type: none"><li>• Increased costs that have not been built into the 2016-17 budget allocations.</li><li>• Significant costs for printing, postage and mailing.</li><li>• Increased costs for related vendor services.</li><li>• Increased staff workload to process notices, applications, hearing requests, other new requirements.</li><li>• Additional costs and time associated with the modification of case management systems.</li></ul> <p>While the JRS sees the urgency in payment the rules of court and related forms, it strongly recommends the implementation date be changed to July 1, 2017 so that the courts have the ability to implement the changes accurately and effectively.</p> <p>2. The JRS recommends that no language be added to the revised and proposed new rules</p>	<p>Response: The committees have not added any language to the rules that would prohibit or encourage this practice.</p>

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			<p>that would prohibit a court from first offering the defendant the ability to make full payment within 90 days before considering the other alternatives to full payment, such as fee reductions, installment plans, community service, etc. This practice has worked well in at least one court and other courts may consider this approach.</p> <p><b>Regarding the adoption of rule 4.106:</b></p> <p><b>General comments:</b></p> <p>1. Statutory provisions should not be incorporated into rules of court. This is redundant, incurs costs when rules must be updated to reflect statutory changes, and risks the rule becoming out of date when statutes change. While the drafters are attempting to assist litigants and understandably so, there is no reason to believe that the rules of court are significantly more accessible to defendants than is the Vehicle Code; in any case, that is not the proper function of the rules of court. Court procedures should be transparent to defendants, but that transparency is better achieved through online or written materials, not notices. Generally, these proposals illustrate the proposition that suitable and easily accessible self-help materials, online and in writing, are better solutions to the needs of defendants than are extensive and costly rule-making and notice requirements.</p>	<p>Response: Although the commenters correctly state that a defendant’s rights are enumerated under Pen. Code 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council “to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute”].) Self-help materials cannot establish procedures.</p>

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			<p>2. Regarding proposed rule 4.106(c)(1), the enumerated right is redundant with PC 1241.1(b)(1). The proposed text goes beyond the statute to the degree that it requires applicable procedures to be incorporated in the notice. Available procedures can be explained in self-help materials.</p> <p>3. Regarding proposed rule 4.106(c)(1)(2), the proposed text is redundant with PC 1214.1(b)(1), which states that “The assessment imposed pursuant to subdivision (a) shall not become effective until at least 20 calendar days after the court mails a warning notice to the defendant...” Available procedures for requesting to vacate can be explained in self-help materials.</p> <p>4. Regarding proposed rule 4.106(c)(1)(3), the proposed text is redundant with existing CRC 4.105(b). The Advisory Committee Comment enumerates some of the circumstances that may indicate good cause, potentially reducing judicial discretion, or at least causing confusion, to the extent that its embodiment in rule encourages defendants to cite to it.</p> <p>5. Regarding proposed rule 4.106(c)(1)(4), the JRS supports this new language as it helps to discourage defendants from using such</p>	<p>Response: Although the commenters correctly state that the defendant’s rights are enumerated in Penal Code section 1214.1, proposed rule 4.106 provides courts with guidance on procedures for vacating or reducing the civil assessment. As discussed above, this is a common and appropriate purpose for rules of court. Self-help materials cannot establish procedures.</p> <p>Response: This portion of proposed rule 4.106 specifically addresses situations when defendants have failed to appear or pay and civil assessments are imposed, whereas rule 4.105 addresses arraignment and trial.</p> <p>Response: The committees have revised subdivision (c)(3). The advisory committee comment provides examples of good cause and is not intended to limit judicial discretion.</p> <p>No response necessary.</p>

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			<p>petitions as tactics to delay payment.</p> <p>6. Regarding proposed rule 4.106(c)(1)(5), the proposed text is redundant with PC 1214.1(b)(1).</p> <p>7. Regarding proposed rule 4.106(c)(1)(6), the proposed text is redundant with PC 1214.1(a) (“the court <b>may</b> impose a civil assessment of <b>up to</b> three hundred dollars,” emphasis added). This is also an example where the conciseness of the existing statute is preferable to the more verbose language that results when using the rules of court to provide instructions to litigants.</p> <p>8. The language in proposed rule 4.106(d) has the effect of declaring that the provisions of rule 4.105 pertain to collections referrals. It is thus redundant with rule 4.105.</p>	<p>Response: Although rights are enumerated under Penal Code section 1214.1(b)(1), proposed rule 4.106 provides additional procedures for vacating and reducing civil assessments. As discussed above, this is a common and appropriate purpose for rules of court.</p> <p>Response: The commenters are correct that the rule provides judicial discretion to impose an amount of up to \$300. (Pen. Code, § 1214.1(a).) The proposed rule is intended to provide courts with guidance regarding vacating or reducing civil assessments and to clarify the statute. As discussed above, this is a common and appropriate purpose for rules of court. Based on the comments received, it appears that there is confusion regarding whether a civil assessment can be reduced for good cause, thus this language appears warranted.</p> <p>Response: The Judicial Council adopted rule 4.105, effective June 8, 2015, on an urgency basis on the request of the Chief Justice to address concerns regarding requiring defendants to post bail before challenging traffic infractions. In adopting rule 4.105, the council directed the appropriate advisory committees to consider changes to rules, forms, or any other recommendations necessary to promote access to justice in all infraction cases, including</p>



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			<p>recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay fines or fees. This subdivision of 4.106 is meant to address situations when a defendant has failed to appear in unadjudicated cases.</p> <p>Response: The committees agree that this subdivision needed clarification. The rule has been revised has to clarify the limitations apply if the request to modify is based on a request other than inability to pay.</p> <p>9. Regarding proposed rule 4.106(e)(1), insofar as it does not specify the grounds for the petition, this section is overly broad. VC 42003(e) provides that, “At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment <b>on the grounds of a change of circumstances with regard to the defendant’s ability to pay the judgment.</b>” (emphasis added) There is no such limitation in proposed rule 4.106(e). If there were, the proposed rule would be redundant with statute.</p> <p>10. Regarding proposed rule 4.106(g), the VC sections cited refer to failures to pay, and thus assume that the case has been adjudicated. Standard case processing would satisfy proposed rule 4.106(g) if, at adjudication, the defendant has notice and opportunity to raise the issue of ability to pay. This could be accomplished by a general notice provided to all those who attend a court hearing or participate in a Trial by</p> <p>Response: This subdivision has been revised to state: “This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.”</p>

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			<p>Declaration. Such standard procedures, accomplished elsewhere in the rules of court, would render this section redundant and thus obviate the need for an additional notice.</p> <p><b>Regarding the adoption of rule 4.107:</b></p> <p><b>Suggested Modifications:</b></p> <p><b>1. The JRS recommends adding the following highlighted language to proposed rule 4.107(a):</b></p> <p><u>Each court must send a mandatory “courtesy notice” to the address shown on the <i>Notice to Appear</i> or to the defendant’s last known address before the initial appearance. The failure to receive a courtesy notice shall not be a defense to failure to comply with the promise to appear on the citation.</u></p> <p>The JRS strongly recommends adding the above highlighted text so that it remains clear that courtesy notices are not official notices to appear in court. Courtesy notices are unofficial reminders sent to the defendant as a courtesy. They are not sent with any kind of mail tracking, such as proof of service. The official notice is the citation and a defendant’s signature on the citation is his/her agreement to appear. Because the citation is the official notice, failure to receive a courtesy notice should</p>	<p>Response: The committees agree and have revised the proposal to provide that the failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the signed notice to appear.</p>

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			<p>not be a defense to failure to comply with the promise to appear on the citation. The JRS strongly recommends adding the above highlighted text so that it is clear to both the courts and the public that a defendant cannot use a failure to receive a courtesy notice as grounds for challenging why he/she did not appear in court on the date specified on the citation.</p> <p><b>2. The JRS recommends modifying the language in proposed rule 4.107(b)(1) as indicated by the highlighted text below:</b></p> <p><u>In addition to information obtained from the Notice to Appear, the courtesy notice must contain at least the following information:</u>  <del>(1) An appearance date and location; Text stating that the appearance date and location are specified on the citation;</del></p> <p>The appearance date and location are already specified on the citation. Requiring the courts to include this information on the courtesy notices increases the workload of court staff significantly and unnecessarily. A generic statement referring defendants to their citations for this information achieves the same goal and it would make the processing of the courtesy notices quicker and easier for the courts.</p> <p><b>3. The JRS recommends modifying the</b></p>	<p>Response: The committees have declined to pursue the suggestion. Requiring that the notice state the appearance date and location furthers one of the notice’s primary purposes: providing defendants with information about their case to ensure that they do not fail to appear.</p>

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			<p><b>language in proposed rule 4.107(b)(7) as indicated by the highlighted text below:</b></p> <p><u>(7) The right to request an ability-to-pay determination, including the availability of community service (if available) and installment payment plans (if available); and</u></p> <p>Some trial courts do not offer community service and installment payment plans as options. By adding “if available” to the above rule language, the new rule would be more clear in conveying that the courts are not mandated to provide community service and installment payment plans as alternatives to payment in full.</p> <p><b>Regarding the adoption of rule 4.335:</b></p> <p><b>General Comments:</b></p> <ol style="list-style-type: none"><li>1. The JRS recommends that forms be developed to assist the courts with determining defendants’ ability to pay. The JRS recommends that the forms be modeled after the Income and Expense Declaration forms.</li><li>2. The JRS also recommends that a form be created to request an ability to pay determination or a review of this determination.</li></ol>	<p>Response: The committees agree and have incorporated the suggested language into the proposal.</p> <p>Response: The committees appreciate the suggestion and are contemplating developing statewide forms related to ability to pay.</p> <p>Please see response above.</p>

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	Commentator	Position		Committee Response
			<p>3. Regarding proposed rule 4.335(b), the proposed language is redundant with the language in proposed rule 4.107(b)(7).</p> <p>4. Regarding proposed rule 4.335(c)(1-3), the proposed language is redundant with VC 42003.</p> <p><b>Suggested Modifications:</b></p> <p><b>1. The JRS recommends that proposed rule 4.335(c)(4) include language that states that the courts may inquire into the ability of the defendant to pay all or a portion of the fee(s).</b></p> <p>The proposed rule creates the possibility of</p>	<p>Response: Although the two rules do overlap, proposed rule 4.335(b) is more expansive than proposed rule 4.107(b)(7) because it (1) encourages courts to provide notice of the right to request an ability-to-pay determination not only in the reminder notice, but also in other notices and locations, if applicable; and (2) requires that courts also “make available instructions or other materials for requesting an ability to pay determination.”</p> <p>Response: Vehicle Code section 42003 does require that courts consider the defendant’s ability to pay. The California Rules of Court commonly restate statutory requirements where necessary to provide context for the rules of court administration and rules of practice and procedure adopted by the council. (See Cal. Rules of Court, rule 10.1(b) [recognizing that the California Constitution requires the council “to improve the administration of justice by . . . [a]dopting rules for court administration and rules of practice and procedure that are not inconsistent with statute”].)</p> <p>In addition, proposed rule 4.335(c)(3) would provide for a procedure to implement Vehicle Code section 42003 that is not stated expressly in the statute: a court would be required to permit a written request for an ability-to-pay determination, unless it directs a court appearance.</p> <p>Response: This rules proposal is not intended to</p>

**SP16-08**

**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position		Committee Response
			<p>an administrative determination of ability to pay, and thus an increase in efficiency compared to a courtroom hearing. However, the JRS believes this benefit is outweighed by the following problems. The proposed rule, by specifying binary criteria (i.e., evidence of SSI) appears to make the ability-to-pay determination all-or-nothing, while statute provides that, upon request, the court may inquire "into the ability of the defendant to pay all or a portion of those costs..." (VC 42003(c)), thus implying the ability to impose partial judgments. This would have the effect of making a large class of people immune to financial penalty for traffic violations. By making bright-line criteria (modeled upon fee waiver provisions), the proposed rule would remove the judge's discretion in this area. The JRS, therefore, suggests adding in language that states that the courts may inquire into the ability of the defendant to pay all or a portion of the fee(s).</p> <p><b>2. The JRS recommends modifying the language in proposed rule 4.335(c)(5) as indicated by the highlighted text below:</b></p> <p><u>(5) The defendant has the right to a review by a judicial officer of the determination made by the clerk or the collection agent, if requested in writing within 20 calendar days of the sending date of the notice of decision. The defendant must be advised of the right to</u></p>	<p>eliminate judicial discretion. Because various comments indicate general confusion over the intended scope of the delegation to the clerk or county revenue collections agency, the committees have decided to remove this provision from the proposal. Instead, the committees have added an advisory committee comment, which provides the court, in determining a defendant's ability to pay, should consider whether the defendant receives public benefits and whether the defendant has a monthly income of 125 percent or less of the current poverty guidelines.</p> <p>Response: The committees agreed with the suggestion to specify that the judicial officer has the discretion to conduct the review on the written record or to order a hearing. Because they removed subdivision (c)(5) from the proposal, they incorporated this suggested language into</p>

**SP16-08**

**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position		Committee Response
			<p><u>seek this review. The review is not required to be in the form of a hearing. The judicial officer has the discretion to conduct the review on the written record or to order a hearing.</u></p> <p>The JRS recommends the above language modification so that the rule clearly states that judicial officers are not required to provide a hearing for a review and that, in fact, it remains within judicial discretion to order a hearing or review by writing only. This section of the new rule could result in numerous requests by defendants for in-person hearings. Therefore, the JRS recommends this modification so that the new rule does not inadvertently result in a significantly greater workload for judicial officers and court staff.</p> <p><b>3. The JRS recommends modifying the language in proposed rule 4.335(c)(6)(C) as indicated by the highlighted text below:</b></p> <p><u>(C) <del>Suspend</del> Reduce the fine in whole or in part;</u></p> <p>As discussed above, the JRS believes that it would be inappropriate to remove all penalties in adjudicating an infraction violation based on the financial status of the defendant. One who has been adjudicated to have violated the law should suffer some</p>	<p>subdivision (c)(3).</p> <p>Response: This proposal preserves judicial discretion. It is ultimately up to the reviewing judge to determine whether to lower the base fine and, if so, by how much. Regardless of whether the judge suspends the base fine in full, any mandatory fees requires by statute cannot be</p>

**SP16-08**

**Amend Cal. Rules of Court, rule 4.105; adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Admin. Standards, standard 4.41**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>		<b>Committee Response</b>
			detriment, even if, based on the defendant's financial circumstances, it is appropriate to reduce the penalty to a nominal amount in one payment or over time, or to order community service.	suspended.

DRAFT



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal (include amend/revise/adopt/approve + form/rule numbers):**

Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees

Revise forms TR-300 and TR-310

*Committee or other entity submitting the proposal:*

Traffic Law Advisory Committee (TAC)

Revise forms TR-300 and TR-310

*Staff contact (name, phone and e-mail):*

Jamie Schechter

415-865-5327

[jamie.schechter@jud.ca.gov](mailto:jamie.schechter@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/10/2015

Project description from annual agenda:

TAC annual agenda:

Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.

*If requesting July 1 or out of cycle, explain:*

This proposal circulated this spring from March 21 to May 6, 2016. The committee recommended recirculating the proposal on an expedited cycle from August 3 to August 26, 2016, in light of the public comments received, communications from various advocacy groups and other entities to the Judicial Council expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees, and other related developments. The expedited cycle allowed the committee to present this proposal to the Judicial Council during its December meeting.

The committee has recommended that the forms go into effect on January 1, 2017, and that courts be required to implement as soon as reasonably possible, but no later than May 1, 2017.

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

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Title

Traffic: Installment Payment of Bail  
Forfeiture and Traffic Violator School Fees

Agenda Item Type

Action Required

Effective Date

January 1, 2017, with implementation as  
soon as reasonably possible, but no later than  
May 1, 2017

Rules, Forms, Standards, or Statutes Affected  
Revise forms TR-300 and TR-310

Recommended by

Traffic Advisory Committee  
Hon. Gail Dekreon, Chair

Date of Report

November 10, 2016

Contact

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### Executive Summary

The Traffic Advisory Committee recommends revising forms TR-300 and TR-310 for installment payments for traffic infractions. These revisions would standardize and improve court procedures related to installment payment plans for infraction offenses and would expand the advisement of rights provided to defendants. The revised forms would inform defendants of their right to request a determination of their ability to pay at any time before their final payment. The committee developed the revised forms in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases.

## Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2017, with implementation as soon as reasonably possible, but no later than May 1, 2017:

1. Revise forms TR-300, *Agreement to Pay and Forfeit Bail in Installments*; and TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*.

Courts must implement these provisions as soon as reasonably possible but no later than May 1, 2017. The revised forms are attached at pages 11–14.

## Previous Council Action

Recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 of the California Rules of Court on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to consider rule, form, or any other recommendations necessary to promote access to justice in all infraction cases including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay.

## Rationale for Recommendation

California Vehicle Code<sup>1</sup> sections 40510.5 and 42007 authorize court clerks to accept bail forfeitures and traffic violator school fees in installments for traffic infractions. Sections 40510.5 and 42007 also require the Judicial Council to adopt forms for court clerks to use for processing the installment payments. Courts are not required to offer installment payment plans, but courts that allow clerks to offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

The committee has examined court procedures for infraction cases to develop ways to improve access to justice as directed by the council. As part of that effort, the committee proposes revising forms to further standardize and improve the imposition of bail, fines, and assessments when the defendant wishes to pay by installment. Specifically, the committee recommends revising forms TR-300, *Agreement to Pay and Forfeit Bail in Installments*, and TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*—which court clerks use to process installment payment plans—with expanded advisement of rights in traffic infraction cases.

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<sup>1</sup> All statutory references are to the Vehicle Code unless specified.

### **Form TR-300**

As provided in section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory court appearance. Under current law, a court that uses the form is required to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles (DMV) as a conviction on the date the agreement is signed. (Veh. Code, § 40510.5(b), (d).) No trust account is required, and payments are distributed when received. (*Id.*, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the DMV, charge a failure to pay or failure to appear under Vehicle Code section 40508, issue a warrant, or send a notice that a civil assessment will be imposed if the defendant does not show good cause for the failure to pay. (*Id.*, §§ 40509.5, 40510.5(e); Pen. Code, § 1214.1(b)(1).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as bail that is deposited for other criminal cases. (Veh. Code, § 40510.5(c).) The information on form TR-300 is consistent with the above statutes.

Because the installment payment procedure does not require an arraignment or an appearance before a judicial officer in court, and because there are significant legal consequences for failure to make an installment payment, the form includes an express written advisement of rights and signed waiver of rights by the defendant. The form includes signed acknowledgements of the consequences for failure to pay an installment.

To enhance procedural fairness for infraction cases, the committee proposes revising form TR-300 to provide an expanded advisement and waiver of rights. Page 2 of the revised form would expand notice of the defendant's rights to include: "To ask for community service instead of paying the total amount due."

Page 2 of revised form TR-300 would also inform the defendant of his or her right to request an ability-to-pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

By signing form TR-300, the defendant affirms that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisement, and agrees to pay and forfeit bail in installments.

Additional minor changes to clarify and update form TR-300 would include:

- Revising the instructions at the top of page 1 to indicate that the form is to be “completed by the court.” This language would replace the instruction that the form be “filled out by a court clerk” to recognize current practices at some local courts, where case management systems frequently generate these forms, even when defendants enter into installment agreements at the clerk’s counter.
- Revising section 1 to include minor stylistic changes to language.
- Revising section 2 to recognize that a defendant may have been granted an extension of his or her appearance date. Section 2 would also use plain language to state that the appearance or extension date “has not passed.”
- Revising section 3 to remove as unnecessary the statement by the defendant that: “I am not able to pay the entire amount at the present time. I ask the court to allow me to pay in installments.”
- Revising section 4 to clarify that: “each violation that is reportable to the Department of Motor Vehicles and has no proof of correction will be reported as a conviction.”
- Revising section 5 to enhance visual clarity and readability and to provide for greater consistency with proposed new form TR-300 (online), which the committee is presenting to the council in a separate proposal.
- Revising section 5 to clarify the list of possible actions by the court for failure to pay as agreed.
- Revising section 5 to remove the instruction to see the clerk the next court day after a missed payment.
- Revising for improved readability the notice to defendants at the bottom of the form regarding the consequences of signing the form.
- Revising the bottom of the form to collect the telephone number and e-mail address of the defendant.
- Revising the bottom of the form to add optional provisions for defendants to request electronic notifications, SMS text messages, and call reminders about the installment payments due under the agreement. The shaded text is intended to be optional so that courts may omit this language if they are not able to provide electronic notices, text messages, or call reminders.
- Revising the bottom of the form to remove the space previously provided for entering the expiration date of the defendant’s driver’s license. This revision would provide sufficient space on the form to collect the defendant’s telephone number and e-mail address.
- Revising page 2 to include minor changes to wording to improve readability.
- Revising page 2 to add optional language to inform defendants: “If you do not make a payment, please contact the court as soon as possible to make arrangements.”

### **Form TR-310**

Form TR-310 is used by court clerks to accept installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements are limited to a maximum length of 90 days by statute. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic

violator school is due at the time of the final payment. (*Ibid.*) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (*Id.*, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (*Ibid.*) The information on form TR-310 is consistent with the above statutes.

To further enhance procedural fairness for infraction cases, the committee recommends revising form TR-310 to provide an expanded advisement and waiver of rights. Revised form TR-310 would provide notice of the defendant's rights: (1) "To appear in court without deposit of bail for formal arraignment, plea, and sentencing;" and (2) "To ask for community service instead of paying the total amount due." In addition, the advisement would also be updated to be consistent with rule 4.105 and state that defendants may "request and have a court trial to challenge the charges without deposit of bail, unless the court orders bail."

Page 2 of the revised form would also provide notice to the defendant of the right to request an ability-to-pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

By signing form TR-310, the defendant affirms that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisement, and agrees to pay traffic violator school fees in installments.

Additional minor changes to clarify and update form TR-310 would include:

- Revising the instructions at the top of page 1 to indicate that the form is to be "completed by the court." This language would replace the instruction that the form be "filled out by a court clerk" to recognize current practices at some local courts, where case management systems frequently generate these forms, even when defendants enter into installment agreements at the clerk's counter.
- Revising section 1 to include minor stylistic changes to language.
- Revising section 2 to recognize that a defendant may have been granted an extension of his or her appearance date. Section 2 would also use plain language to state that the appearance or extension date "has not passed."

- Revising section 3 to remove as unnecessary the statement by the defendant that: “I am not able to and I ask the court to allow me to pay in installments. I understand that the court has costs and expenses from accepting a request to pay the fees in installments.”
- Revising section 4 to enhance visual clarity and readability and to provide for greater consistency with proposed new form TR-310 (online), which the committee is presenting to the council in a separate proposal.
- Revising section 4 to clarify the list of possible actions by the court for failure to pay as agreed.
- Revising section 4 to remove the instruction to see the clerk the next court day after a missed payment.
- Revising the notice to defendants at the bottom of the form regarding the consequences of signing the form to improve readability.
- Revising the bottom of the form to collect the telephone number and e-mail address of the defendant.
- Revising the bottom of the form to add optional provisions for defendants to request electronic notifications, call reminders, and SMS text messages about the installment payments due under the agreement. The shaded text is intended to be optional so that courts may omit the option if their systems are not able to provide electronic notices or text messages.
- Revising the bottom of the form to remove the space for providing the expiration date of the defendant’s driver’s license. This revision would provide sufficient space on the form to collect the defendant’s telephone number and e-mail address.
- Revising page 2 to add optional language to inform defendants: “If you do not make a payment, please contact the court as soon as possible to make arrangements.”

### **Comments, Alternatives Considered, and Policy Implications**

This proposal circulated twice for public comment. It was first circulated in March and April 2016. In light of the comments received during the first circulation and other developments, the committee revised the proposal and recommended its recirculation on an expedited basis from August 3 to August 26, 2016, to allow it to go into effect on January 1, 2017. All commenters who submitted comments during the first circulation were instructed to resubmit comments during the second circulation if their concerns had not been addressed in the revised proposal.

#### **Comments**

Eleven comments were submitted in response to the second invitation to comment; two agreed with the proposal, two agreed with the proposal if modified, two disagreed with the proposal, and five did not indicate their position. The committee’s specific responses to each comment are available in the attached comment chart at pages 15–37.

***Appearing on the next court day for missed payments.*** Forms TR-300 and TR-310 currently contain language requiring defendants who miss a payment to appear in court on the next court

day. The circulated forms<sup>2</sup> would have changed this language from mandatory to optional. They would have also added optional language to the back of the forms instructing defendants to contact the court as soon as possible after missing a payment. The committee had intended to provide two options from which the courts could select depending on their local practices.

One commenter expressed concern that the language on the front of the form instructing defendants to appear in court the next day might be inconsistent with a defendant's right to request an ability-to-pay determination. This objection applies regardless of whether this language is optional or mandatory. Another commenter suggested that the optional language on the back of the forms instructing defendants to contact the court as soon as possible after missing a payment was unnecessary in light of the language on the front requiring a defendant to appear in court the day after missing a payment.

The committee recommends removing entirely the current language on the front of forms instructing defendants to appear on the court date after missing a payment. Distinct from section 42003, sections 40510.5 and 42007 do not require that the defendant appear in court on the date that the installment payment plan is due if he or she cannot pay. (See Veh. Code, § 42003(a) ["A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, *he or she shall appear in court on that date for further proceedings,*" italics added].) Because forms TR-300 and TR-310 provide for installment payment plans only under sections 40510.5 and 42007—not 42003—these forms do not need to provide this instruction to the defendant. To encourage defendants to return to court after missing any payments, the committee recommends including only the optional language on the back of the form that instructs defendants to contact the court as soon as possible after missing a payment.

***Advisements on the right to an ability-to-pay determination.*** The circulated forms proposed language advising defendants that by entering into the installment payment agreement, they would be waiving the right to ask the court to consider their ability to pay. One commenter suggested placing this information on the front of the forms to provide enhanced notice to defendants.

While recognizing the importance of advising defendants that they would be waiving this right, the committee, on further reflection, decided against adding this particular advisement to the forms. The committee was concerned that this advisement might lead to confusion that a defendant was permanently giving up that right. Defendants do give up the right to request an ability-to-pay determination at the time they enter into the installment payment agreement, but

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<sup>2</sup> All references to "circulated forms" refer to the proposed revisions to forms TR-300 and TR-310 that circulated for public comment during the second comment cycle.



they still retain the right to request an ability-to-pay determination at any time while the judgment remains unpaid.<sup>3</sup>

Although the committee decided against adding this advisement to the section on the waiver of rights, it retained the notice informing defendants that they have a right to request an ability-to-pay determination based on changed circumstances at any time before making the final payment. It declined to move this notice on ability to pay to the front of the forms because the front is already crowded with important information for the defendant, including the terms of the agreement and notices to the defendant regarding the potential consequences of failing to make a payment. Providing this notice on the back of the forms allows for the use of large font with greater white space, enhancing its readability.

***Translation of forms.*** One commenter recommended translating the advisement of rights into the most common languages used in the issuing county. The committee recognizes the importance of increasing access to the courts for defendants who do not read English. The Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials. If approved by the council, these forms would be considered as part of that larger effort.

***Description of charged offense and notice of collateral consequences.*** One commenter requested that section 1 on the forms not only cite to the statute that the defendant was charged with violating, but also provide a description of the offense. The commenter expressed concern that defendants would otherwise not understand the nature of the charges, and that the guilty plea and waiver of rights would not be knowing and voluntary. In addition, this commenter recommended including additional advisements to defendants of possible collateral consequences, including that a traffic conviction reported to the DMV may result in one or more negligent operator points on a defendant's driving record, may lead to difficulties obtaining driving-related employment, may subject defendants to higher car insurance rates, and may result in suspension of a defendant's driver's license if the defendant accumulates too many points within a specified period of time.

While the committee is sensitive to the commenter's concerns, it declined to pursue these suggestions. First, defendants generally enter into these installment agreements at the clerk's counter, and it is not feasible or appropriate for clerks to provide a description of the charged offense. If the defendant does not understand the charges, he or she should seek the advice of counsel or ask to appear before a judicial officer. Second, the committee decided against providing additional notice of collateral consequences to defendants on this form. The form is already crowded with important notices and advisements to the defendant regarding their rights

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<sup>3</sup> The committee has recommended a separate rules proposal based on Vehicle Code section 42003, which allows for defendants to request an ability-to-pay determination based on changed circumstances at any time during the pendency of the judgment. (Veh. Code, § 42003(e).)

and obligations under the installment payment agreement. In addition, several of the collateral consequences involve private industries (e.g., higher insurance rates and potential difficulties obtaining driving-related employment), which are outside of the purview of the Judicial Council or courts.

***Suspending the base fine in whole.*** The advisement of rights on the circulated forms informs the defendant of the options available to a court if a defendant requests an ability-to-pay determination. These options include suspending the base fine in whole or part. One commenter recommended revising this language to reflect only that the fine may be suspended in part, not in whole, because it would be inappropriate to remove all penalties in adjudicating an infraction violation based on the financial status of the defendant. This commenter stated that individuals who violate the law should suffer some detriment.

The committee declined to revise the language as suggested. A judge may suspend the base fine in whole or part as an exercise of discretion. The purpose of the proposal is to provide greater notice to defendants of their rights, not to restrict judicial discretion. Moreover, even if a judicial officer were to suspend the full amount of the base fine, the defendant would still have to pay any mandatory fees required by statute.

***Other comments.*** The circulated forms also advised defendants that they may be charged with a misdemeanor under section 40508 if they fail to complete their payment plan. Noting that a defendant may be charged with a misdemeanor or an infraction under section 40508, one commenter recommended revising the advisements to better track the statute. The committee agreed and incorporated the suggestion into this proposal.

Lastly, one commenter requested that the forms be revised to allow defendants to consent to automated call reminders, in addition to text messages and electronic notices. The committee agreed and incorporated this suggestion into the proposal.

### **Alternatives**

In response to the council's directives to consider recommendations to promote access to justice in all infraction cases, the committee considered other alternatives such as legislative proposals. Those proposals, however, typically involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current proposal. The committee intends to separately consider recommendations to promote access to justice in future proposals.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal expands the advisements of rights that courts provide to defendants in infraction cases. In expanding notice of their rights, it is foreseeable that more defendants will assert those rights by, for example, requesting an ability-to-pay determination. The committee expects that any such increase in requests for ability-to-pay determinations would, in turn, result in greater court operations and staffing costs. Moreover, to the extent that some courts may not currently

allow defendants to request an ability-to-pay determination after entering into an installment payment plan, this proposal, in conjunction with the separate rules proposal on ability to pay that the committee is presenting concurrently to the council, may result in greater court operations and staffing costs, and may require providing training for court staff and judicial officers regarding the processing of infraction cases. The committee is sensitive to the impact of these additional costs on courts. Nevertheless, it believes that, on balance, any increased burdens are outweighed by the resulting procedural fairness.

### **Attachments and Links**

1. Judicial Council forms TR-300 and TR-310, at pages 11–14
2. Chart of comments, at pages 15–37

DRAFT

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b>  <b>vs.</b>  DEFENDANT:	
<b>AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS</b> <b>(Vehicle Code, § 40510.5)</b>	

CITATION NUMBER:
CASE NUMBER:

**TO BE COMPLETED BY THE COURT**

**Read carefully and, if you agree, sign and return the form to the clerk.**

- I am the defendant in this case and I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court:  
 a. § \_\_\_\_\_ b. § \_\_\_\_\_ c. § \_\_\_\_\_ d. § \_\_\_\_\_ e. § \_\_\_\_\_
- My court appearance date or extension date has not passed, and I am providing proof of correction for any correctable violations.
- I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
- I understand that by signing below, each violation that is reportable to the Department of Motor Vehicles (DMV) and has no proof of correction will be reported as a conviction.

**5. TERMS OF THE AGREEMENT:**  
 Total bail (including penalties and administrative fee of \$ \_\_\_\_\_) is \$ \_\_\_\_\_  
 Initial Payment (10% minimum): \$ \_\_\_\_\_  
 Remaining balance after first payment: \$ \_\_\_\_\_

( ) I agree to pay the remaining balance in monthly installments of at least \$ \_\_\_\_\_ due on the \_\_\_\_\_ day of each month, starting on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ and until paid in full on or before \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

( ) Other (explain): \_\_\_\_\_

I agree that: All payments must be made by the due date and there is no grace period.  
 If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.  
 I understand that if I do not make the payment by each due date the court may:  
 Charge me with a failure to appear or pay under Vehicle Code section 40508.  
 Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.  
 Report the failure to pay to the DMV, which may suspend or place a hold on my driver's license.  
 Assign my case to a collection agency or the State Franchise Tax Board for collection.

I understand that if I pay as agreed and if any proof of correction has been filed with the court as required, my bail forfeiture will be complete, and at that time, the case will be closed.

**By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side, and that I choose to give them up.**

(SIGNATURE OF DEFENDANT)	(DATE)	(TYPE OR PRINT NAME)
(DRIVER'S LICENSE / D NUMBER)	(ADDRESS)	(CITY, STATE, AND ZIP CODE)
(TELEPHONE NUMBER)	<input type="checkbox"/> [I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]	
(E-MAIL ADDRESS)	<input type="checkbox"/> [I have provided an e-mail address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement. [Optional.]	

CLERK OF THE SUPERIOR COURT

ACCEPTED (date): \_\_\_\_\_ BY: \_\_\_\_\_ (DEPUTY CLERK)

## ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]  
[Optional]

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**  
 STREET ADDRESS:  
 MAILING ADDRESS:  
 CITY AND ZIP CODE:  
 BRANCH NAME:

**PEOPLE OF THE STATE OF CALIFORNIA**  
**vs.**  
 DEFENDANT:

**AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS**  
**(Vehicle Code, § 42007)**

*FOR COURT USE ONLY*

**DRAFT**

CITATION NUMBER:  
 CASE NUMBER:

**TO BE COMPLETED BY THE COURT**

Read carefully and, if you agree, sign and return the form to the clerk.

- I am the defendant in this case. I have been charged with the following infraction violation(s) that do not require me to go into court and that are eligible for confidential conviction(s) for completion of traffic violator school:  
 a. § \_\_\_\_\_ b. § \_\_\_\_\_ c. § \_\_\_\_\_ d. § \_\_\_\_\_ e. § \_\_\_\_\_
- My court appearance date or extension date has not passed, and I am providing proof of correction for any correctable violations.
- I want to pay the traffic violator school fees for the violation listed above. I understand that the court does not have to allow me to make installment payments.
- TERMS OF THE AGREEMENT:**  
 The total fee (including an administrative fee of \$ \_\_\_\_\_) is \$ \_\_\_\_\_

Initial Payment (10% minimum): \$ \_\_\_\_\_  
 Remaining balance after first payment: \$ \_\_\_\_\_

( ) I agree to pay the remaining balance within 90 days. I will pay in monthly installments of at least \$ \_\_\_\_\_ due on the \_\_\_ day of each month, starting on \_\_\_ / \_\_\_ / \_\_\_ and until paid in full on or before \_\_\_ / \_\_\_ / \_\_\_.

( ) Other (explain): \_\_\_\_\_

I agree that: All payments must be made by the due date and there is no grace period.  
 If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.  
 I understand that if I do not complete my payment plan the court may:  
 Charge me with a failure to pay under Vehicle Code section 40508.  
 Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.  
 Report convictions and the failure to pay to the Department of Motor Vehicles, which may suspend or place a hold on my driver's license.  
 Assign the case to a collection agency or the State Franchise Tax Board for collection.  
 I understand that my case will continue to be open until the date that my last installment is paid. If I pay as agreed and if my proof of completion of traffic school is reported, a confidential conviction will be reported to the DMV and no further proceedings will be held.

**By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side and that I choose to give them up.**

\_\_\_\_\_  
 (SIGNATURE OF DEFENDANT)                      \_\_\_\_\_ (DATE)                      \_\_\_\_\_ (TYPE OR PRINT NAME)

\_\_\_\_\_  
 (DRIVER'S LICENSE/ID NUMBER)                      \_\_\_\_\_ (ADDRESS)                      \_\_\_\_\_ (CITY, STATE, AND ZIP CODE)

\_\_\_\_\_  
 (TELEPHONE NUMBER)

\_\_\_\_\_  
 (E-MAIL ADDRESS)

[I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]

[I have provided an e-mail address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional]

CLERK OF THE SUPERIOR COURT

ACCEPTED (date): \_\_\_\_\_ BY: \_\_\_\_\_ (DEPUTY CLERK)

## ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court **without deposit of bail** for formal arraignment, plea, and sentencing;
- **To ask for community service (if available) instead of paying the total amount due;**
- To **request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;**
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you; and
- To remain silent and not testify.

**At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.**

**[If you do not make a payment, please contact the court as soon as possible to make arrangements.]**

**[Optional]**

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	<p>ACLU of California By Christine P. Sun Micaela Davis</p> <p>A New Way of Life Reentry Project By Theresa Zhen</p> <p>Lawyers’ Committee for Civil Rights of the San Francisco Bay Area By Elisa Della-Piana</p> <p>Bay Area Legal Aid By Rebekah Evenson</p> <p>Bay Area Legal Aid By Stephen Bingham Retired Attorney</p> <p>Western Center on Law and Poverty By Antionette Dozier</p> <p>Legal Services for Prisoners with Children By Brittany Stonesifer</p> <p>East Bay Community Law Center By Brandon Greene</p> <p>USC Gould School of Law By Clare Pastore</p> <p>Neighborhood Legal Services of Los Angeles County by Eliza Schafler</p>	N/I	<p><b>Revised Forms TR-300 and 310</b></p> <p><u>TR-300 – Agreement to Pay and Forfeit Bail in Installments</u></p> <p>We are pleased to see that the Committee has expanded the information in the bail forfeiture in installments form TR-300’s waiver of rights. Whereas the first version of the proposed rule informed defendants that they would be waiving their rights to an ability to pay determination and to request community service, the new version also informs defendants that if they have experienced a change in financial circumstances at any point before final payment, they may request the court consider their ability to pay, after which the court may modify the plan, suspend all or part of the fine or convert some of the fine to community service. Proposed TR-300 Advisement of Rights. However, as we stated in our previous comments, in order to provide clear notice to the defendant, the information about ability to pay determinations should be included on the face of the installment form itself, in addition to being included in the Advisement of Rights.</p> <p>The form should also be revised to comport with Proposed Rule 4.106(e), subject to our comments to that rule. That rule explicitly gives defendants the right to request an ability to pay determination upon a missed payment. And our</p>	<p>The committee appreciates the input provided by these organizations.</p> <p>The committee declines to pursue this suggestion. The committee has deleted the advisement that by entering into an installment agreement, a defendant would be giving up the right to an ability to pay determination. The committee was concerned that this change would imply that a defendant was permanently giving up that right, which is inconsistent with the currently-pending proposal to adopt rules 4.106, 4.107, and 4.335.</p> <p>The bottom of the advisement of the form still contains information about ability-to-pay determinations. The committee declines the suggestion to move this advisement to the front of the form. The front of the form is already crowded with important information for the defendant. It contains the terms of the agreement and notices to the defendant regarding the potential consequences of failing to make a payment. Providing for this advisement on the back of the form allows for the use of large font with greater white space, enhancing its readability for defendants.</p> <p>Distinct from Vehicle Code section 42003, sections 40510.5 and 42007 do not require that the defendant appear in court on the date that the installment payment plan is due if he or she cannot pay. (Cf. Veh. Code, § 42003(a) [“A</p>



**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>comments to that rule would provide notice to a defendant of that right upon a missed payment and give the defendant a reasonable time to correct or request modification. The provisions set forth in the rules and our comments are inconsistent with TR-300’s provisions that all payments must be made on time with no grace period, that failure to make one payment may result in the total amount being due, and that the defendant must see the clerk the day after a missed payment. These provisions should be stricken from the form to cohere with the other proposed rules and the guiding principle of flexibility that must be applied to installment plans.</p> <p>With respect to fees, although the statute requires a defendant pay administrative costs associated with the installment plan, we recommend that the Judicial Council require the court to waive these fees. Strapping more debt onto defendants with limited means is harmful and counterproductive.</p> <p>Finally, we are pleased to see that the Committee has proposed including spaces on the form where a defendant can submit her cell phone and/or email for SMS or email notification about installment payments. This type of electronic notification system should be expanded in the court system, including on the traffic ticket itself, to help ensure that transient</p>	<p>judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, <i>he or she shall appear in court on that date for further proceedings,</i>” italics added].) Because forms TR-300 and TR-310 provide only for installment payment plans under sections 40510.5 and 42007, not 42003, these forms do not need to provide this instruction to the defendant. Accordingly, the committee agrees and has removed from the form the language notifying the defendant that he or she must see the clerk on the day after the due date of the missed payment. The committee declines to remove the other provisions as requested. The potential consequences of failure to pay provide defendants with notice.</p> <p>The committee declines to pursue this suggestion. To the extent fees are mandated by statute, this change would require legislative action.</p> <p>The committee declines to pursue these suggestions at this time because they are outside the scope of this forms proposal, but may consider these suggestions in developing future proposals, or in revising forms, such as the <i>Notice to Appear</i> forms.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>or homeless individuals actually receive follow-up notices from the court.</p> <p><u>TR-310 – Agreement to Pay Traffic Violator School Fees in Installments</u></p> <p>The same comments for TR-300 apply here.</p> <p><b>Critical Areas for Further Reform</b></p> <p><u>Procedure for notifying defendant of charges and options</u></p> <p><i>First</i>, as discussed above, it is our understanding that many people never receive the courtesy notices mailed by the court. In addition to our suggestions above about mailing notices via certified mail, because many of our clients do not have stable housing, we also recommend that the courts implement an electronic notification system whereby courtesy notices or reminders about courtesy notices be sent by the court via text message and email, in addition to being sent via regular mail.<sup>6</sup> The text or email alert could inform a person of the due date of their ticket, amount of the ticket, and direct them to contact the court to find out how to dispose of the ticket. An email alert could include additional attached information, such as the courtesy notice in its entirety. We were pleased to see the addition of an SMS and email notification system added to form TR-300 and hope that it can be expanded to this context. Since not all defendants will have text and email</p>	<p>Please see responses above.</p> <p>The committees have revised proposed rule 4.107 to expand procedures for sending mandatory reminder notices electronically. The committee declines to pursue the other suggestions at this time because they are outside the scope of this forms proposal. However, the committee may consider these suggestions in developing future proposals, or in revising forms, such as the <i>Notice to Appear</i> forms.</p>

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**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>capability, it is important for the court to continue to send the notices by regular mail as well.</p> <p>[Footnote in original]<sup>6</sup> It is our experience that some courts presume that having a car indicates a certain level of wealth and therefore that someone cited for a moving violation cannot be homeless. We note that there are many individuals who are homeless, despite owning a car, and also that there many instances in which a person may be cited for a moving violation while driving a friend or family member’s car. Moreover, even if the link between driving and homelessness were true, we note that the traffic court procedures discussed in this letter are equally applicable to citations issued to pedestrians for non-driving-related infractions.</p> <p><i>Second</i>, the Judicial Council must address the issues with court delay in processing traffic citations. It is our understanding that in many counties there is a lengthy delay in the time it takes between the citation being issue and the court registering the citation in its system. This results in scenarios where a person comes to court or otherwise tries to address their citation, but is told that their citation is not yet in the system. This can occur both when a person tries to appear or address the citation before the date listed on the citation and when the person comes on the day specified by the citation. A traffic</p>	

**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>court defendant who must check back multiple times is more likely to end up missing a payment or appearance. It is especially egregious for a person to be penalized for a failure to pay or appear in this situation, where the person clearly exercised due diligence in disposing of the ticket.</p> <p><u>Notice to Appear forms</u></p> <p>The Judicial Council must improve notice procedures at a traffic defendant’s point of entry into the system – when the person is first cited for an infraction. As we have stated in previous comments, the Judicial Council should itself use its authority under Vehicle Code § 40500(b) to modify its standard Notice to Appear forms to include a notification of the right to a judicial determination of ability to pay, the options available to those who can’t afford to pay, and a warning that a person’s driver’s license may be suspended or other sanctions may be imposed for non-payment unless the court determines that the person does not have the ability to pay.</p> <p>We also suggest that the amount of the fine be included on the ticket itself. The base fines and fees for all of the infraction offenses are readily available in the Judicial Council’s Uniform Bail Schedule and the citing officer should be required to list the infraction’s amount on the Notice to Appear. Doing so would provide more immediate and adequate notice to the defendant and would at least provide the defendant with</p>	

**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>basic information in the event she does not receive a courtesy notice.</p> <p>Upon implementing a text message and email notification procedure, the Judicial Council must modify the Notice to Appear citation forms to enable the citing officer to enter a current phone number and/or email address for the defendant, if the defendant wishes to provide that information. The form should also contain a place for the individual to note if she is unlikely to receive mail at the address listed, because it is not a permanent address or not stable for any reason.</p> <p>Finally, in addition to changing the Notice to Appear form, a procedure should be put in place whereby the citing officer gives out information on how to obtain an ability to pay determination, the alternatives available to those on public benefits and with low incomes who cannot pay in full and instructions on how to access language translation services.</p> <p><u>Trial in Absentia</u></p> <p>It is imperative that the Judicial Council address the due process violations inherent in finding people guilty in absentia. Many courts use this process to turn open cases into convictions, using the fiction that the defendant has chosen a trial by written declaration. Though the statutory authority for this practice is broad under Vehicle Code § 40903, we urge the Judicial Council to</p>	

**SP16-09**

**Revise forms TR-300 and TR-310**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>carefully consider the constitutional and practical implications of this practice—particularly without clear procedures for overturning these convictions—and consider prohibiting or severely limiting its use.</p> <p>We thank the Committee for the opportunity to comment on these proposed rules. As noted, these comments are not exhaustive and we welcome the opportunity to work with the Committee to further improve court practice around imposition of fines and fees.</p>	
2.	<p>Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary Cochair</p> <p>Hon. Laurie D. Zelon Cochair</p>	A	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. PAF understands that there are complicated and intersecting issues involving California’s fines and fees, low-income families, and communities of color. Many of the people coming into traffic court do not have attorneys and it can be difficult for them to understand and move through the traffic court process.</p> <p>PAF has been collaborating with the Traffic and Criminal Law Advisory Committees on strategies to improve access <i>and</i> fairness for Californians in traffic court. PAF provided input during the development of proposal number SP16-08 and is supportive of that proposal. SP16-09 and SP16-10 take additional, important steps toward improving access <i>and</i> fairness for traffic court litigants. PAF looks forward to continued collaboration with the Traffic and</p>	<p>The committee appreciates the input provided by the Advisory Committee on Providing Access and Fairness.</p>

**SP16-09****Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Criminal Law Advisory Committees.	
3.	California Commission on Access to Justice State Bar of California By Hon. Mark A. Juhas Chair	N/I	The Access Commission supports the revision of the traffic infraction installment payment forms to provide information about payment alternatives and community service options, as well as standardize court procedures, making the process fairer for low income Californians. We recommend that the “Advisement of Rights” be translated into the most common languages, other than English, in the county.	The committee appreciates the input provided by the California Commission on Access to Justice. The committee recognizes the importance of increasing access to the courts for defendants who do not read English. The Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials. If approved by the council, these forms would be considered as part of that larger effort.
4.	Hon. Christine Copeland Commissioner Superior Court of California, Santa Clara County	A	As to the procedures and changes to TR-310, it would help to have guidance and even a CRC or legislation re:  (1) If a court is required to offer, as an option, monthly payments for traffic school;  (2) A court’s ability (or lack thereof) to order monthly payments for traffic school if a defendant is appearing at an arraignment or trial. VC42007 and form TR-310 envision a defendant waiving arraignment and entering into a monthly payment plan with the clerk re: monthly payments for traffic school. However, the statutory framework leaves open whether a court, if it orders monthly payments for traffic school, must follow the same scheme (10%	The committee appreciates the court’s input.  Form TR-310 does not require that a court offer installment payment plans for paying the traffic violator school fee. However, if the court does offer installment payment plans, the use of this form is mandatory.  Form TR-310 addresses only the installment payment agreements entered into at the clerk’s counter. The application of Vehicle Code section 42007 in other contexts is outside the scope of this proposal.

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**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			down, then remainder of the amount due in 3 installments), or if it has discretion to grant or deny monthly payments to begin with.	
5.	Albert De La Isla Principal Administrative Analyst West Justice Center Superior Court of California, Orange County	N/I	<p>[Form TR-300: I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement. I authorize the court to send me electronic notices regarding payments that I owe under this agreement.]</p> <p>Should also include automated call reminders, not just text messages.</p> <p>[Form TR-300: “I authorize the court to send me electronic notices regarding payments that I owe under this agreement.”] [Optional]”]</p> <p>Should say something like:</p> <p>I have provided an e-mail address and I authorize the court to send me. . . .</p> <p>Consistency</p> <p>[Form TR-300: “To ask for community service instead of paying the total fine; To ask the court to consider your ability to pay in determining the fine, penalties, and fees for the case;”]</p> <p>At this stage, it is not a fine, it is a bail amount due that they are forfeiting without a court appearance. Need clarification there.</p>	<p>The committee appreciates Mr. De La Isla’s input.</p> <p>The committee agrees and has incorporated the suggestion into the proposal.</p> <p>The committee agrees and has incorporated the suggestion into the proposal.</p> <p>Penal Code section 1209.5 authorizes a defendant charged with an infraction to ask for community service in lieu of the total fine. The statute defines “total fine” as the “base fine and all assessments,</p>



**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>Same on the previous advisement.</p> <p>[Form TR-300: “At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.”]</p> <p>Same comment here, this is not a fine at this time.</p> <p>[Form TR-300: “[If you do not make a payment, please contact the court as soon as possible to make arrangements.] [Optional]”]</p> <p>Should be removed as this is already stated on the 1st page.</p> <p>[Form TR-310: “[I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional]”]</p> <p>Should also state that they authorized automated call reminders as well.</p>	<p>penalties, and additional moneys to be paid by the defendant.” Nevertheless, the committee agrees that the reference to a fine may be confusing and has revised the form to refer to “total amount due.”</p> <p>Please see the response above.</p> <p>Because the committee has removed the notice to the defendant to see the clerk the day following a missed payment, it declines the suggestion to remove this language on the back of the form.</p> <p>Please see the response above.</p>

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**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>[Form TR-310: “[I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional]”]</p> <p>I have provided an e-mail address and I authorize the court to send me. . . .</p> <p>Consistency</p> <p>[Form TR-310: “To ask the court to consider your ability to pay in determining the fee for traffic violator school and the fine, penalties, and fees for the case; To ask for community service instead of paying the total fine;”]</p> <p>It is not a fine.</p> <p>[Form TR-310: “At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.”]</p> <p>Not a fine.</p>	<p>Please see the response above.</p> <p>Please see the response above.</p> <p>Please see the response above.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
6.	Robert M. Hertzberg Senator, 18th Senate District	N/I	<p>I appreciate the opportunity to comment on the proposed rules related to traffic criminal procedures, notices, and fees. It is encouraging to see continued work by Judicial Council to make rules of the court easier for individuals to seek remedies and to make amends for vehicle violations.</p> <p>I reviewed the three traffic proposals, and generally appreciate the clarity of notices, timeliness, standardization, and attempts to move certain actions online. It is a great frustration that county courts have different rules and forms, not to mention the near-total lack of online uniformity and access to county courts. These proposals will make it clearer to all Californians what their rights are and how to seek fee waivers or ability to pay determinations and will take a modest, but important, step toward modernizing the courts.</p> <p>These proposals will hopefully reduce the crushing burden of fines and fees for low income individuals by facilitating ability to pay determinations and fee waivers. The modest online tool for requesting a payment plan should be mandatory, not optional, for each of the 58 courts. These are important, if small, steps in the right direction.</p> <p>Unfortunately, the proposals do nothing to eliminate the widespread use – and abuse – of the license suspensions to collect-court ordered debt. The United States Department of Justice</p>	The committee appreciates Senator Hertzberg’s input. The committee declines to pursue these suggestions at this time because they are outside the scope of this forms proposal. The committee may consider these suggestions in drafting future legislative proposals.

**SP16-09**

**Revise forms TR-300 and TR-310**

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	Commentator	Position	Comment	Committee Response
			<p>indicated last year that this practice is of questionable constitutionality. Years ago, license suspensions may have seemed like a useful tool for collection court-ordered debt, but now we know the negative impact it has on millions of Californians.</p> <p>The fact is, a suspended license means lost income, lost employment, and generally increases the burden of poverty. It's much harder to get childcare, education, and work without transportation. And state data shows that the tool unfairly burdens communities of poverty and color.</p> <p>This is an issue about which I am passionate. I have carried several pieces of legislation over last two years addressing injustice. And until we start using better, fairer, punishments that more closely fit the nature of these crimes (i.e., minor traffic offenses), we will not have the fair justice system that Californians deserve.</p>	
7.	<p>Legal Aid Foundation of Los Angeles By Yolanda C. Arias Managing Attorney</p>	N/I	<p><b>Forms TR-300 and TR-310 should include the description of the offense in Paragraph 1.</b></p> <p>Due to the complex nature of the Vehicle Code and the Penal Code, we recommend that Paragraph 1 on Forms TR-300 and TR-310 include a description of the offense along with the section the defendant was charged with. Most members of the public are not familiar with the various violations one can be charged with in traffic court, and it is unlikely that they will be able to identify the alleged offense</p>	<p>The committee appreciates the input of the Legal Aid Foundation of Los Angeles.</p> <p>The committee declines to pursue this suggestion. Defendants generally enter into these installment agreements at the clerk's counter, and it is not feasible or appropriate for clerks to provide a description of the charged offense. If the defendant does not understand the charges, he or she should seek the advice of counsel or ask to appear before a judge.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>solely based on the statutory section. We are concerned that without a description of the charged offense, many individuals will not understand the nature of the charges they are admitting guilt to.</p> <p>Under these circumstances, it cannot be said that they are knowingly and voluntarily waiving their rights when they enter into these payment agreements. We ask that the Judicial Council include a description of the offense in order to ensure that all traffic court litigants are fully informed before they waive their rights.</p> <p><b>Form TR-300 should include an advisement of the collateral consequences of admitting guilt to a traffic infraction.</b></p> <p>Form TR-300 currently includes an advisement that by completing the payment agreement form, all reportable violations will be reported to the Department of Motor Vehicles as convictions. However, the statement does not include the collateral consequences of having those offenses reported as convictions. In order to fully advise individuals of the rights they are forfeiting, we recommend that the form state, in the “Advisement of Rights” section, that having a traffic infraction conviction reported to the DMV may result in one or more negligent operator points on one’s driving record, can lead to difficulty obtaining driving-related employment, subjects drivers to higher car insurance rates, and can even result in a driver's</p>	<p>The committee declines to pursue this suggestion. The form is already crowded with important notices and advisements to the defendant regarding their rights and obligations under the installment payment agreement. Furthermore, several of these collateral consequences involve private industries (higher insurance rates, difficulty obtaining driving-related employment), which are outside of the purview of the Judicial Council or courts.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>license suspension if a driver accumulates too many points within a specified period of time.</p> <p><b>The Judicial Council should recommend a stakeholder review process for development and review of notices, instructions and forms.</b></p> <p>The development of easy to read and language accessible notices, instructions and forms will be critical to the success of these reforms. There are stakeholders throughout the state that have experience with the barriers defendants face in dealing with traffic infraction cases. The Judicial Council should recommend or institute a stakeholder review process whereby legal advocates, LAFLA Comments to Judicial representatives from community based organizations and other stakeholders would provide input into the readability and language compliancy of the information being disseminated to the public.</p> <p>As indicated above, LAFLA is pleased to see these very necessary reforms being made and is grateful.</p>	<p>The Judicial Council’s process for developing rules and forms includes a public comment period, which is intended to provide an opportunity for stakeholder input. Stakeholders are invited to submit specific recommendations for changes to the circulated proposals.</p> <p>The specific suggestion to implement a new stakeholder review process is beyond the scope of the present proposal, but may be referred to the council’s Rules and Projects Committee for consideration.</p>
8.	<p>Superior Court of California, El Dorado County By Jackie Davenport Assistant Court Executive Officer</p>	N	<p>Please see El Dorado Court’s comments to the proposed rule changes. We disagree with the proposals to allow a defendant to request ability to pay determinations/hearings and therefore disagree with the proposed language to allow a defendant to request a determination on ability to pay any time before the final payment.</p>	<p>The committee appreciates the court’s input. While this proposal does notify defendants of their right to request an ability-to-pay determination, the court’s comments are directed primarily to proposed rule 4.335’s ability-to-pay provisions. Proposed rule 4.335 circulated concurrently with this forms proposal, and the committee has provided specific responses to the court’s concerns in the comment chart attached to</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
9.	Superior Court of California, Los Angeles County	AM	<p>On both forms we suggest changing line 2. from:</p> <p>“My court appearance date has not passed,...”</p> <p>to</p> <p><b>“My court appearance or extension date has not passed,...”</b></p> <p>Also, we propose removing the reference to a “misdemeanor” Vehicle Code section 40508 as reflected under “5. Terms of Agreement,” about 2/3rds of the way down the page on both forms TR-300 and TR-310. A Vehicle Code section 40508 charge can be added as either a misdemeanor or an infraction, and therefore we recommend rewording that line to allow courts the flexibility to charge as either.</p> <p>Suggested change:</p> <p>“Charge me with a misdemeanor under Vehicle Code section 40508.”</p> <p>to</p> <p><b>“Add an additional charge under Vehicle Code section 40508.”</b></p> <p><b>Request for Specific Comments:</b></p>	<p>the council report for that proposal.</p> <p>The committee appreciates the court’s input. It agrees with this suggestion and has incorporated it into the proposal.</p> <p>Because a defendant may be charged with an infraction or a misdemeanor under Vehicle Code section 40508, the committee agrees with this suggestion and has incorporated it into the proposal.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>• <b>Does the proposal appropriately address the stated purpose?</b></li> </ul> <p>No comment.</p> <ul style="list-style-type: none"> <li>• <b>Are there any additional forms, procedures, instructions or advisements that should be added to the proposal.</b></li> </ul> <p>No comment.</p> <ul style="list-style-type: none"> <li>• <b>Would the proposal provide a cost savings?</b></li> </ul> <p>No.</p> <ul style="list-style-type: none"> <li>• <b>Would the proposal increase costs?</b></li> </ul> <p>Yes.</p> <p><b>Major Costs to CMS for implementation and programming due to possible ability to pay hearings:</b></p> <ol style="list-style-type: none"> <li>1. The court would have to create at least two hearing types to define what stage the defendant is requesting the ability to pay hearing. If made prior to a failure to pay status, the costs have to be covered by operations. If the case has already been referred to collections, then the costs could be recoverable as a collections issue.</li> <li>2. Additional costs would be incurred by updating our current forms to conform to the</li> </ol>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The additional anticipated costs and burdens identified by the court appear to primarily be a result of proposed rule 4.335 on ability-to-pay determinations. To the extent that these forms are implicated, it would be because the forms give defendants notice that they may request an ability-to-pay determination while the installment payment plan remains pending.</p>



**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>latest JC version for printed and imaged use.</p> <p>3. Programming would be needed for new rulings, change of bail amounts, calendaring, and notices for rulings.</p> <p>4. Interface programming would be needed to update bail amounts as they change in ETRS and PRD.</p> <p>5. Programming would be needed to interface with GC Services systems, so that cases referred to collections can be set on the court's calendar for an ability to pay hearing. Cases may need to be returned to GCS after the hearing.</p> <p>▪ <b>Operational Costs:</b></p> <p>1. Costs for processing the initial requests would be negligible, since our Court already provides the program. If the Judicial Council mandated the payment plan for traffic school, costs would increase temporarily because the program would have to be developed and implemented.</p> <p>2. For our court, the process has been established and has been fairly successful. Minor additional training would be needed.</p> <p>3. Staffing increases for calendaring the new hearing types, providing notice of rulings, and cashiering could be incurred.</p>	<p>Form TR-310 does not require that a court offer installment payment plans for paying the traffic violator school fee. However, the use of this form is mandatory if the court does offer installment payment plans for the traffic violator school fee entered into at the clerk's counter.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p><b>• What would be the implementation requirements be for courts?</b></p> <p>Would include:</p> <ul style="list-style-type: none"> <li>▪ CTS – Programming updates to the existing form, development of new hearing types, calendaring, financial interface and changes to the bail amount. Integration with GC Services.</li> <li>▪ Operational Implementation – Procedure development and training.</li> <li>▪ Possible dedication of specific courtrooms to hear the ability to pay hearings.</li> </ul> <p><b>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>No. Since our resources are divided between the new CMS and other issues, we may need more time to implement.</p> <p><b>• How well would this proposal work in courts of different sizes.</b></p> <p>No comment.</p>	<p>Because the committee recognizes that some courts may need additional time to implement this proposal, it has recommended an extended implementation date. Specifically, courts are urged to implement this proposal as soon as reasonably possible, but no later than May 1, 2017.</p> <p>No response required.</p>
10.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, Joint Rules Subcommittee	AM	<p><b>General Comment:</b></p> <p>1. The JRS <i>strongly</i> recommends that the</p>	<p>The committee appreciates the input of the Joint Rules Subcommittee.</p> <p>Because the committee recognizes that some</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>effective date of the revised forms discussed in this proposal be changed to July 1, 2017 to provide the trial courts with additional time to successfully and comprehensively implement this and the other urgent traffic proposals. While the JRS appreciates the authoring committees adjusting their timeline to present at the October 2016 Judicial Council business meeting so that the trial courts would have two months to implement, doing so would not actually give the courts two full months for implementation. After taking into consideration the four court holidays and additional time that court staff will take for vacation during November and December, the courts will have significantly less than two full months for implementation.</p> <p>Also, accurate and comprehensive implementation will require more than two months for most trial courts and, especially so, for the smaller courts. An implementation period of less than two months creates significant challenges and burdens for courts of all sizes. For smaller courts, the following changes were specifically identified:</p> <ul style="list-style-type: none"> <li>• Smaller courts do not have internal technology staff to assist in making changes to forms or case management systems. It would be costly to expect any vendors to quickly expedite any changes including necessary programming modifications.</li> </ul>	<p>courts may need additional time to implement this proposal, it has recommended an extended implementation date. Specifically, courts are urged to implement this proposal as soon as reasonably possible, but no later than May 1, 2017.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>• Small court management teams may only consist of two to three individuals (at best) that need additional time to develop processes and appropriate training for staff in and out of the courtroom. Those same individuals are also responsible for attempting to work with technology vendors to implement changes on courtesy notices, programming, and in-house forms.</li> <li>• Increased costs that have not been built into the 2016-17 budget allocations.</li> <li>• Significant costs for printing, postage and mailing.</li> <li>• Increased costs for related vendor services.</li> <li>• Increased staff workload to process notices, applications, hearing requests, other new requirements.</li> <li>• Additional costs and time associated with the modification of case management systems.</li> </ul> <p>While the JRS sees the urgency in modifying the rules of court and related forms, it strongly recommends the implementation date be changed to July 1, 2017 so that the courts have the ability to implement the changes accurately and effectively.</p> <p><b>Suggested Modification:</b></p> <ol style="list-style-type: none"> <li>1. <b>Regarding the “Advisement of Rights” section of forms TR-300 and TR-310, the JRS recommends adding “(if available)”</b></li> </ol>	<p>The committee agrees and has incorporated this suggestion into the form.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p><b>and replacing “suspend all” with “reduce” as indicated by the highlighted text below:</b></p> <p><u>To ask for community service (if available) instead of paying the total fine;</u></p> <p><u>...If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total fine, or <del>suspend all or reduce part of the fine.</del></u></p> <p>Some trial courts do not offer community service. By adding “if available” as indicated above, the revised forms would be more clear in conveying that the courts are not mandated to provide community service as an alternative to payment.</p> <p>The JRS recommends eliminating references to suspension of the entire fine because it believes that it would be inappropriate to remove all penalties in adjudicating an infraction violation based on the financial status of the defendant. One who has been adjudicated to have violated the law should suffer some detriment, even if, based on the defendant’s financial circumstances, it is appropriate to reduce the penalty to a nominal amount in one payment or over time, or to order community service.</p>	<p>In exercising discretion, a judge may suspend the base fine in whole or part. These forms are intended to correspond with the exercise of judicial discretion. However, even if a judge were to suspend the full amount of the base fine, the defendant would still have to pay any mandatory fees required by statute.</p>

**SP16-09**

**Revise forms TR-300 and TR-310**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
11.	Michele Verderosa Superior Court of California, Lassen County	N		No response required.

DRAFT

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal (include amend/revise/adopt/approve + form/rule numbers):**

Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees

Adopt Cal. Rules of Court, rule 4.108; adopt forms TR-300 (online) and TR-310 (online)

**Committee or other entity submitting the proposal:**

Traffic Law Advisory Committee (TAC)

**Staff contact (name, phone and e-mail):**

Jamie Schechter

415-865-5327

[jamie.schechter@jud.ca.gov](mailto:jamie.schechter@jud.ca.gov)

**Identify project(s) on the committee's annual agenda that is the basis for this item:**

Approved by RUPRO: 12/10/2015

Project description from annual agenda:

TAC annual agenda:

Item 4. In collaboration with ITAC, identify and develop priorities for potential rule and statutory modifications so that the rules and statutes will be consistent with modern business practices. (For example, consider electronic notification to replace mail, paying fines online, etc.). b. Review rules and statutes in a systematic manner and develop recommendations for comprehensive changes. The review and recommendations are being made in phases. Phase 2, which consists of a more substantive review of the statutes and rules will commence in 2016.

Item 5. Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.

**If requesting July 1 or out of cycle, explain:**

This proposal circulated this spring from March 21 to May 6, 2016. The committee recommended recirculating the proposal on an expedited cycle from August 3 to August 26, 2016, in light of the public comments received, communications from various advocacy groups and other entities to the Judicial Council expressing continued concerns about court practices resulting in the suspension of driver's licenses for failure to pay fines and fees, and other related developments. The expedited cycle allowed the committee to present this proposal to the Judicial Council during its December meeting.

The committee has recommended that the forms go into effect on January 1, 2017, and that courts be required to implement as soon as reasonably possible, but no later than May 1, 2017.

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

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Title

Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees

Agenda Item Type

Action Required

Effective Date

January 1, 2017, with implementation as soon as reasonably possible, but no later than May 1, 2017

Rules, Forms, Standards, or Statutes Affected  
Adopt Cal. Rules of Court, rule 4.108; adopt forms TR-300 (online) and TR-310 (online)

Recommended by

Traffic Advisory Committee  
Hon. Gail Dekreon, Chair

Date of Report

November 10, 2016

Contact

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### Executive Summary

The Traffic Advisory Committee recommends new forms and a companion rule of court for online installment payments for traffic infractions. Forms TR-300 (online) and TR-310 (online) are designed for use in online interfaces that allow defendants to enter into installment payment agreements under Vehicle Code sections 40510.5 and 42007. New companion rule 4.108 of the California Rules of Court would allow for the use of online interfaces to form installment payment agreements and would require that defendants be advised of their rights before entering into an agreement. It would also provide that forms TR-300 (online) and TR-310 (online) are alternative mandatory forms intended for use in these online interfaces. The committee developed this proposal as part of a larger effort to modernize rules and forms and in response to council directives to consider recommendations to promote access to justice in all infraction cases.



## **Recommendation**

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2017, with implementation as soon as reasonably possible, but no later than May 1, 2017:

1. Adopt rule 4.108 of the California Rules of Court; and
2. Adopt forms TR-300 (online), *Online Agreement to Pay and Forfeit Bail in Installments*; and TR-310 (online), *Online Agreement to Pay Traffic Violator School Fees in Installments*.

The text of the new rule is attached at page 10. The forms are attached at pages 11–14.

## **Previous Council Action**

The Judicial Council's Information Technology Advisory Committee (ITAC) is leading a multiyear, collaborative effort to comprehensively review and modernize statutes, rules, and forms to facilitate electronic filing and service and foster modern e-business practices. Last year, the council's advisory committees completed phase I, which culminated in the Judicial Council's adoption of an initial round of technical amendments to address language in the rules and forms that was incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. The Traffic Advisory Committee is now participating in phase II, which involves identifying statutes, rules, and forms that may hinder electronic filing and modern e-business practices, along with developing recommendations to promote and improve e-business practices. ITAC's Rules and Policy Subcommittee provided input on this proposal before it was first circulated for public comment.

Additionally, recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to consider rule, form, or any other recommendations necessary to promote access to justice in all infraction cases including recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay.

## **Rationale for Recommendation**

The committee has examined court procedures for infraction cases to recommend ways to improve access to justice as directed by the council and to modernize court procedures. As part of that effort, the committee recommends the adoption of new form TR-300 (online), *Online Agreement to Pay and Forfeit Bail in Installments*, new form TR-310 (online), *Online Agreement to Pay Traffic Violator School Fees in Installments*, and new companion rule 4.108, *Installment Payment Agreements*.

### **Use of online interfaces for installment payment agreements**

This proposal would provide on a statewide basis for the online interfaces offered by some courts for entering into installment payment agreements under California Vehicle Code<sup>1</sup> sections 40510.5 and 42007. In effect, these online interfaces simulate the interaction between the clerk and the defendant that would occur if the installment agreement were processed in person at the clerk's counter, rather than online.

The online interfaces contemplated by this proposal differ from electronic filing systems generally in that they would be designed to allow for offer and acceptance of the installment agreement before the agreement is electronically filed into the court. Each interface would link directly to a court's case management system such that the online forms would be automatically populated with information relevant to the defendant's case, including pending charges and total bail.

Based in part on input provided by defendants, the online interfaces would calculate the initial payment, the online transaction fee (if any), the total amount due that day, the remaining balance after first payment, the amount of monthly installment payments, the day those payments are due each month, and the starting and ending dates for the monthly payments. The online forms would be populated with this information.

Before entering into installment agreements, the online interfaces would provide defendants with an advisement of rights. Lastly, the online interfaces would let defendants accept the installment agreement by typing their name on the form and electronically filing the form into the court. Courts are not required to offer this online interface, but if courts offer this interface for installment payments, they must use forms TR-300 (online) and TR-310 (online).

### **Forms TR-300 (online) and TR-310 (online)**

Sections 40510.5 and 42007 require the Judicial Council to adopt forms for courts to use for processing installment payment plans under those statutes. Courts are not required to offer installment payment plans, but courts that offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

As provided in section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory appearance in court. Under current law, a court that offers installment plans for bail is required to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles as a conviction on the date the agreement is entered into. (Veh. Code, § 40510.5(b), (d).) No trust account is required and payments are distributed when received. (*Id.*, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the Department of Motor Vehicles, charge a failure to appear or pay

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<sup>1</sup> Statutory references are to the Vehicle Code unless specified.

under section 40508, issue a warrant, or send a notice that a civil assessment will be imposed if the defendant does not show good cause for the failure to pay. (*Id.*, §§ 40509.5, 40510.5(e); Pen. Code, § 1214.1(b)(1).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as bail that is deposited for other criminal cases. (Veh. Code, § 40510.5(c).)

Existing form TR-310 is used for installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements are limited to a maximum length of 90 days by statute. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Ibid.*) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under section 1803. (*Id.*, § 42007(a)(3).) The court may declare that no further proceedings be had; charge a failure to pay and impose a civil assessment; or issue a warrant. (*Ibid.*)

Forms TR-300 (online) and TR-310 (online) are drafted to follow similar procedures when a court allows defendants to request installment payments through online interfaces without having to appear in person at the court for a clerk to process the request. This procedure would facilitate payment plans for many defendants, including those who live in different counties or other states. The information on the forms is consistent with the above statutes.

***Advisement of rights.*** An online installment payment procedure does not require an arraignment or an appearance before a judicial officer in court, and there are significant legal consequences for failure to make an installment payment. To further enhance procedural fairness for infraction cases, the committee recommends the adoption of forms TR-300 (online) and TR-310 (online) with attachments containing an advisement and waiver of rights.

In addition to the advisements provided in existing forms TR-300 and TR-310,<sup>2</sup> forms TR-300 (online) and TR-310 (online) would expand notice of defendant's rights to include (1) "To appear in court without deposit of bail for formal arraignment, plea, and sentencing," and (2) "To ask for community service instead of paying the total fine."

Forms TR-300 (online) and TR-310 (online) would also provide notice to defendants of the right to request an ability-to-pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying

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<sup>2</sup> The committee has recommended expanding the advisement of rights on forms TR-300 and TR-310 in a separate proposal presented concurrently to the council.

the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

Form TR-310 (online) would contain the additional notice that “[i]f the court grants your request, you may no longer be eligible for traffic school.”

By electronically filing forms TR-300 (online) or TR-310 (online) through a court’s online interface, a defendant acknowledges that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisements, and agrees to pay and forfeit bail in installments.

***Optional provisions.*** Forms TR-300 (online) and TR-310 (online) would include the following optional provisions:

- Section 2 on both forms and section 5 on form TR-300 (online) would have optional shaded text regarding proof of correction for correctable violations. Some online interfaces may not be programmed to process or track proof of correction for correctable violations. The forms would include optional text shaded in grey for courts with systems that include correctable violations from online installment payments. This text may be omitted by the court if their online interfaces are designed to exclude correctable violations.
- Section 5 on form TR-300 (online) and section 4 on form TR-310 (online) would include optional language allowing courts to charge an additional online transaction fee as authorized by Government Code sections 6159 and rule 10.820 of the California Rules of Court.
- The forms would include optional provisions for defendants to request electronic notifications, SMS text messages, and call reminders about the installment payments due under the agreement. The shaded text is intended to be optional so that courts can omit these provisions if the court is not able to provide electronic notices, text messages, or call reminders.
- The attachments include optional language that would inform defendants: “If you do not make a payment, please contact the court as soon as possible to make arrangements.”

#### **Proposed Rule 4.108**

Proposed rule 4.108 would recognize that courts may use online interfaces to enter into installment payment agreements with traffic infraction defendants under sections 40510.5 and 42007. It would require that these online interfaces provide defendants with the advisement of rights in the attachments to forms TR-300 (online) and TR-310 (online) before a defendant may enter into an installment agreement.

Lastly, proposed rule 4.108 would provide that forms TR-300 and TR-300 (online) and forms TR-310 and TR-310 (online) are alternative mandatory forms for use by the courts in entering into installment payment agreements under sections 40510.5 and 42007.

## **Comments, Alternatives Considered, and Policy Implications**

This forms proposal circulated twice for public comment. It was first circulated in March and April 2016. In light of the comments received during the first circulation and other developments, the committee revised the proposal and recommended its recirculation on an expedited basis from August 3–26, 2016, to allow it to go into effect on January 1, 2017. All commenters who submitted comments during the first circulation were instructed to resubmit comments during the second circulation if their concerns had not been addressed in the revised proposal.

### **External comments**

Eight comments were submitted in response to the second invitation to comment; two agreed with the proposal, two agreed with the proposal if modified, one disagreed with the proposal, and three did not indicate their position. The committee's specific responses to each comment are available in the attached comment chart at pages 15–29.

***Appearing on the next court day for missed payments.*** The circulated forms<sup>3</sup> contained language requiring defendants who missed a payment to appear in court on the next court day. This language currently appears on the forms TR-300 and TR-310.<sup>4</sup> One commentator expressed concern about including this language on forms TR-300 (online) and TR-310 (online) because it might increase the workload for clerks. The circulated forms would have also added optional language to the back of the forms instructing defendants to contact the court as soon as possible after missing a payment. The committee had intended to provide two options from which the courts could select depending on their local practices.

In light of the commenter's concern, the committee recommended removing the language instructing defendants to appear in court on the court date after missing a payment. Distinct from section 42003, sections 40510.5 and 42007 do not require that the defendant appear in court on the date that the installment payment plan is due if he or she cannot pay. (See Veh. Code, § 42003(a) [“A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, *he or she shall appear in court on that date for further proceedings,*” italics added].) Because forms TR-300 (online) and TR-310 (online) provide only for installment payment plans under sections 40510.5 and 42007—not 42003—these forms do not need to provide this instruction to the defendant.

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<sup>3</sup> All references to “circulated forms” refer to the proposed forms TR-300 (online) and TR-310 (online) that circulated for public comment during the second comment cycle.

<sup>4</sup> The committee has recommended removing this language from forms TR-300 and TR-310 in a separate proposal.

**Online interfaces and forms.** One commenter requested that the proposal require all courts to implement online interfaces. The committee declined to incorporate this suggestion into the proposal because courts are not statutorily required to offer installment payment plans and because some courts do not currently have the technological capabilities to offer online installment plans.

Another commenter requested that the committee combine the two sets of forms (one set for use at the clerk's counter and one in online interfaces). The commenter expressed concern that two sets of forms would lead to confusion among defendants who might try to file the online forms at the clerk's counter. The committee revisited the possibility of combining the two sets of forms. Although it strove to minimize the differences between the forms, it ultimately concluded that it would not be feasible to use only one set of forms for both purposes because: (1) there is insufficient space on the front of the form to provide alternate instructions, and (2) providing alternate instructions on the form—depending on whether the installment payment plan is entered into at the clerk's counter or through an online interface—might cause unnecessary confusion.

Moreover, the online forms would not be available to the public on the Judicial Council website. As provided in proposed rule 4.108, the online forms are intended for use by the courts only in online interfaces, which would generate and populate the forms. They are not intended to be electronically filed into the court through other means. Because access to the forms would be limited, the committee does not anticipate that a member of the public will present the online form at the clerk's counter.

**Proof of correction.** One commenter suggested that the language regarding proof of correction be mandatory rather than optional. The committee decided to retain the language as optional on the form because some courts are unable to provide online installment payment plans for correctable violations due to the limitations of their case management systems. They have designed their online interfaces to allow only those defendants whose offenses do not require proof of correction. Allowing them to remove this language from the forms used in their online interfaces will avoid confusion.

**Translation of forms.** One commenter recommended translating the advisement of rights into the most common language in the issuing county. The committee recognizes the importance of increasing access to the courts for defendants who do not read English. The Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials. If approved by the council, these forms would be considered as part of that effort.

**Other comments.** The circulated forms also advised defendants that they may be charged with a misdemeanor under section 40508 if they fail to complete their payment plan. Noting that a defendant may be charged with a misdemeanor or an infraction under section 40508, one

commenter recommended revising the advisement to better track the statute. The committee agreed and incorporated the suggestion into this proposal.

Lastly, one commenter requested that the forms be revised to allow defendants to consent to automated call reminders, in addition to text messages and electronic notices. The committee agreed and incorporated this suggestion into the proposal.

### **Internal comments**

The circulated forms contained language advising defendants that they would also be giving up the right to ask the court to consider their ability to pay in determining the fee for traffic violator school and the fine, penalties, and fees for the case. While recognizing the importance of advising defendants that they would be waiving this right, the committee, on further reflection, decided against adding this particular advisement to the forms. The committee was concerned that this advisement might lead to confusion that a defendant was permanently giving up that right. Defendants do give up the right to request an ability-to-pay determination at the time they enter into the installment payment agreement, but they still retain the right to request an ability-to-pay determination at any time while the judgment remains unpaid.<sup>5</sup> Although the committee decided against adding this advisement to the section on the waiver of rights, it retained the notice informing defendants that they have a right to request an ability-to-pay determination based on changed circumstances at any time before making the final payment.

### **Alternatives**

In response to the council's directives to consider recommendations to promote access to justice in all infraction cases, the committee considered other alternatives such as legislative proposals. Those proposals, however, typically involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current proposal. The committee intends to separately consider recommendations to promote access to justice in future proposals.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal expands the advisements of rights that courts provide to defendants in traffic infraction cases. In expanding notice of their rights, it is foreseeable that more defendants will assert those rights by, for example, requesting an ability-to-pay determination. The committee expects that any such increase in requests for ability-to-pay determinations would, in turn, result in greater court operations and staffing costs. Moreover, to the extent that some courts may not currently allow defendants to request an ability-to-pay determination after entering into an installment payment plan, this proposal, in conjunction with the separate rules proposal on ability to pay that the committee is concurrently presenting to the council, may result in greater court operations and staffing costs and may require providing training for court staff and judicial

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<sup>5</sup> The committee has recommended a separate rules proposal based on Vehicle Code section 42003, which allows for defendants to request an ability-to-pay determination based on changed circumstances at any time during the pendency of the judgment. (Veh. Code, § 42003(e).)

officers regarding the processing of infraction cases. The committee is sensitive to the impact of these additional costs on courts. Nevertheless, it believes that, on balance, any increased burdens are outweighed by the resulting procedural fairness.

In addition, implementing online interfaces may require changes to case management systems. However, because courts are not required to offer online interfaces for entering into online installment payments to defendants, it would be left to the courts to decide whether any efficiencies gained outweigh the costs. Recognizing that some courts currently offer online installment payments, the committee has recommended an extended implementation date to allow those courts additional time to update their online interfaces. Courts are urged to implement the proposal as soon as reasonably possible, but no later than May 1, 2017.

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.108, at page 10
2. Judicial Council forms TR-300 (online) and TR-310 (online), at pages 11–14
3. Chart of comments, at pages 15–29



Rule 4.108 of the California Rules of Court is adopted, effective January 1, 2017, to read:

1 **Rule 4.108. Installment Payment Agreements**

2  
3 **(a) Online interface for installment payment agreements**

- 4  
5 (1) A court may use an online interface to enter into installment payment  
6 agreements with traffic infraction defendants under Vehicle Code sections  
7 40510.5 and 42007.  
8  
9 (2) Before entering into an installment payment agreement, an online interface  
10 must provide defendants with the Advisement of Rights stated in Attachment  
11 1 of Online Agreement to Pay and Forfeit Bail in Installments (form TR-300  
12 (online)), and Online Agreement to Pay Traffic Violator School Fees in  
13 Installments (form TR-310 (online)).

14  
15 **(b) Alternative mandatory forms**

- 16  
17 (1) The Judicial Council has adopted the following alternative mandatory forms  
18 for use in entering into installment payment agreements under Vehicle Code  
19 sections 40510.5 and 42007:  
20  
21 (A) Agreement to Pay and Forfeit Bail in Installments (form TR-300); and  
22 Online Agreement to Pay and Forfeit Bail in Installments (form TR-  
23 300 (online)); and  
24  
25 (B) Agreement to Pay Traffic Violator School Fees in Installments (form  
26 TR-310); and Online Agreement to Pay Traffic Violator School Fees in  
27 Installments (form TR-310 (online)).  
28  
29 (2) Forms TR-300 (online) and TR-310 (online) may be used only in online  
30 interfaces for installment payment agreements as provided in subdivision (a).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b>  <b>vs.</b>  DEFENDANT:	
<b>ONLINE AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS</b> <b>(Vehicle Code, § 40510.5)</b>	

**TO BE COMPLETED BY THE COURT**

**Read carefully, and if you agree, type your name below and submit the form.**

1. I am the defendant in this case, and I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court:

a. § \_\_\_\_\_ b. § \_\_\_\_\_ c. § \_\_\_\_\_ d. § \_\_\_\_\_ e. § \_\_\_\_\_

2. My court appearance date or extension date has not passed [and I have provided proof of correction for any correctable violations (if applicable).]
3. I want to forfeit and pay bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
4. I understand that by completing this agreement, each violation that is reportable to the Department of Motor Vehicles (DMV) will be reported as a conviction.

**5. TERMS OF THE AGREEMENT:**

Total bail (including penalties and administrative fee of \$ \_\_\_\_\_) is \$ \_\_\_\_\_

Initial Payment (10% minimum): \$ \_\_\_\_\_  
 [Online transaction fee (if applicable): \$ \_\_\_\_\_]  
 Total amount due today: \$ \_\_\_\_\_  
 Remaining balance after first payment: \$ \_\_\_\_\_

I agree to pay the remaining balance in monthly installments of at least \$ \_\_\_\_\_ due on the \_\_\_\_ day of each month, starting on \_\_\_\_/\_\_\_\_/\_\_\_\_ and until paid in full on or before \_\_\_\_/\_\_\_\_/\_\_\_\_.

I agree that: All payments must be made by the due date, and there is no grace period.  
 If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.

I understand that if I do not complete my payment plan, the court may:  
 Charge me with a failure to appear or pay under Vehicle Code section 40508.  
 Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.  
 Report the failure to pay to the DMV, which may suspend or place a hold on my driver's license.  
 Assign the case to a collection agency or the State Franchise Tax Board for collection.

I understand that if I pay as agreed [and if any proof of correction has been filed with the court as required], my bail forfeiture will be complete, and at that time, the case will be closed.

**I have read and understood my rights as explained in this agreement and attachment, and I choose to give them up. (See Attachment 1.) I have read, understood, and agreed to the terms and conditions stated above.**

I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

\_\_\_\_\_  
 (TYPE NAME OF DEFENDANT)      \_\_\_\_\_  
 (DRIVER'S LICENSE/ D NUMBER)      \_\_\_\_\_  
 (ADDRESS)  
 \_\_\_\_\_  
 (CITY, STATE, ZIP CODE)

\_\_\_\_\_  
 (TELEPHONE NUMBER)       [I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]

\_\_\_\_\_  
 (E-MAIL ADDRESS)       [I have provided an e-mail address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional]

ACCEPTED (date): \_\_\_\_\_ BY: \_\_\_\_\_  
 (CLERK OF THE SUPERIOR COURT)

**ADVISEMENT OF RIGHTS**

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]  
[Optional]

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>
<b>PEOPLE OF THE STATE OF CALIFORNIA</b>  <b>vs.</b>  DEFENDANT:	
<b>ONLINE AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS</b> (Vehicle Code, § 42007)	

**TO BE COMPLETED BY THE COURT**

**Read carefully and, if you agree, type your name below and submit the form.**

1. I am the defendant in this case. I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court and that are eligible for confidential conviction(s) by completion of traffic violator school:

TICKET NUMBER:
CASE NUMBER:

- a. § \_\_\_\_\_ b. § \_\_\_\_\_ c. § \_\_\_\_\_ d. § \_\_\_\_\_ e. § \_\_\_\_\_
2. My court appearance date or extension date has not passed [and I have provided proof of correction for any correctable violations.]
3. I want to pay the traffic violator school fees for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.

**4. TERMS OF THE AGREEMENT:**

The total fee (including an administrative fee of \$ \_\_\_\_\_) is: \$ \_\_\_\_\_

Initial Payment (10% minimum): \$ \_\_\_\_\_

[Online transaction fee: \$ \_\_\_\_\_]

Total amount due today: \$ \_\_\_\_\_

Remaining balance after first payment: \$ \_\_\_\_\_

I agree to pay the remaining balance within 90 days. I will pay in monthly installments of at least \$ \_\_\_\_\_ due on the \_\_\_ day of each month, starting on \_\_\_ / \_\_\_ / \_\_\_ and until paid in full on or before \_\_\_ / \_\_\_ / \_\_\_.

I agree that: All payments must be made by the due date and there is no grace period.

If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.

I understand that if I do not complete my payment plan the court may:

Charge me with a failure to pay under Vehicle Code section 40508.

Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.

Report convictions and the failure to pay to the Department of Motor Vehicles (DMV), which may suspend or place a hold on my driver's license.

Assign the case to a collection agency or the State Franchise Tax Board for collection.

I understand that my case will continue to be open until the date that my last installment is paid. If I pay as agreed and if my proof of completion of traffic school is reported, a confidential conviction will be reported to the DMV and no further proceedings will be held.

**I have read and understood my rights as explained in this agreement and attachment, and I choose to give them up. (See Attachment 1.) I have read, understood, and agreed to the terms and conditions stated above.**

I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

(TYPE NAME OF DEFENDANT)	(DRIVER'S LICENSE/ D NUMBER)	(ADDRESS)
		(CITY, STATE, ZIP CODE)

(TELEPHONE NUMBER)	<input type="checkbox"/> [I have provided a cellular phone number, and I authorize the court to send me SMS text Messages or call reminders regarding payments that I owe under this agreement.] [Optional]
(E-MAIL ADDRESS)	<input type="checkbox"/> [I have provided an e-mail address and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional]

ACCEPTED (date): \_\_\_\_\_

BY: \_\_\_\_\_  
(CLERK OF THE SUPERIOR COURT)

## ADVISEMENT OF RIGHTS

## ATTACHMENT 1

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]

[Optional]

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

v	Commentator	Position	Comment	Committee Response
1.	<p>Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O’Leary Cochair</p> <p>Hon. Laurie D. Zelon Cochair</p>	A	<p>The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. PAF understands that there are complicated and intersecting issues involving California’s fines and fees, low-income families, and communities of color. Many of the people coming into traffic court do not have attorneys and it can be difficult for them to understand and move through the traffic court process.</p> <p>PAF has been collaborating with the Traffic and Criminal Law Advisory Committees on strategies to improve access <i>and</i> fairness for Californians in traffic court. PAF provided input during the development of proposal number SP16-08 and is supportive of that proposal. SP16-09 and SP16-10 take additional, important steps toward improving access <i>and</i> fairness for traffic court litigants. PAF looks forward to continued collaboration with the Traffic and Criminal Law Advisory Committees.</p>	<p>The committee appreciates the input provided by the Advisory Committee on Providing Access and Fairness.</p>
2.	<p>California Commission on Access to Justice State Bar of California By Hon. Mark A. Juhas, Chair</p>	N/I	<p>We support the creation of online installment payment forms, and the proposed associated rule of court. With shortened court hours, and the long commutes and precarious employment that many low income Californians experience, it is important to have a way to apply for installment payments that does not require going to court. We recommend against potential online transaction fees. The likely increased collections should be used to cover those costs. The Access Commission recommends that the</p>	<p>The committee appreciates the input provided by the California Commission on Access to Justice of the State Bar of California. Because Government Code section 6159(g) and California Rules of Court, rule 10.820, allow courts to charge a fee for the costs of using a credit card, debit card, or electronic funds transfer, the committee declines to amend the form to remove the reference to the optional online transaction fee.</p> <p>The online forms will be populated through the</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

v	Commentator	Position	Comment	Committee Response
			<p>forms be made usable on smartphones, because that is the means by which many low income people access the internet. We also recommend that the “Advisement of Rights” be translated into the most common languages, other than English, in the issuing county.</p> <p>Thank you again for the invitation to comment. We are heartened to see the needs of low income people considered so prominently in the proposed rules.</p>	<p>use of an online interface. Courts are encouraged to design their online interfaces to be accessible on smartphones.</p> <p>The committee recognizes the importance of increasing access to the courts for defendants who do not read English. The Language Access Planning Task Force has developed a Translation Protocol and a Translation Action Plan to assist the council in prioritizing the translation of Judicial Council forms and other materials. If approved by the council, these forms would be considered as part of that larger effort.</p>
3.	Hon. Christine Copeland Commissioner Superior Court of California, Santa Clara County	A	<p>Just out of curiosity and out of concern for already overworked clerks, the bit on the form about “if I miss a payment I will go to the clerk’s office the next court day after the missed payment” - I assume that institutes yet another process whereby the clerk has to re-do due dates or the like. I imagine that the defendant still has to complete payments within 3 months from the inception of the payment agreement, and that a missed payment doesn’t turn a 3 month payment plan into a 4 or 5 month payment plan?</p>	<p>The committee appreciates Commissioner Copeland’s input.</p> <p>Distinct from Vehicle Code section 42003, sections 40510.5 and 42007 do not require that the defendant appear in court on the date that the installment payment plan is due if he or she cannot pay. (See Veh. Code, § 42003(a) [“A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, <i>he or she shall appear in court on that date for further proceedings,</i>” italics added].) Because forms TR-300 (online) and TR-310 (online) provide only for installment payment plans under sections 40510.5 and 42007—not 42003—these forms do not need to provide this instruction to the defendant. Accordingly, the committee agrees and has removed from the forms the language notifying the defendant that he or she must see the clerk on the day after the due date of the missed</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

v	Commentator	Position	Comment	Committee Response
				payment.
4.	<p>Albert De La Isla Principal Administrative Analyst West Justice Center Superior Court of California, Orange County</p>	N/I	<p>[Form TR-300 (online): “My court appearance date has not passed [and I have provided proof of correction for any correctable violations].”]</p> <p>Should have a statement that all proof of correction needs to be submitted prior to online agreement.</p> <p>[Form TR-300 (online): “I understand that if I pay as agreed [and if any proof of correction has been filed with the court as required],”]</p> <p>Should not be optional, should be mandatory text.</p> <p>[Form TR-300 (online): “[I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional]”]</p> <p>Should also state that they authorized automated call reminders.</p> <p>[Form TR-300 (online): “[I authorize the court to send me electronic notices regarding payments that I owe under this agreement.]”]</p>	<p>The committee appreciates Mr. De La Isla’s input. The committee declines to pursue this suggestion. It has retained the language regarding proof of correction as optional on the form because some courts are unable to provide online installment payment plans for correctable violations due to the limits of their current case management systems. They have designed their online interfaces to allow only those defendants whose offenses do not require proof of correction, but allowing them to remove this language from the forms will avoid confusion.</p> <p>Please see response above.</p> <p>The committee agrees and has incorporated the suggestion into the proposal.</p>



**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

v	Commentator	Position	Comment	Committee Response
			<p>[Optional]”</p> <p>I have provided an e-mail address and I authorize the court to send me. . . .</p> <p>Consistency</p> <p>[Form TR-310 (online): “My court appearance date has not passed [, and I have provided proof of correction for any correctable violations.”]</p> <p>Should be mandatory.</p> <p>[Form TR-310 (online): “[I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional]”]</p> <p>Should include authorization of automated call reminders.</p> <p>[Form TR-310 (online): “[I authorize the court to send me electronic notices regarding payments that I owe under this agreement.]”</p> <p>I have provided an e-mail address and I authorize the court to send me. . . .</p> <p>Consistency</p>	<p>The committee agrees and has incorporated the suggestion into the proposal.</p> <p>Please see response above.</p> <p>Please see response above.</p> <p>The committee agrees and has incorporated the suggestion into the proposal.</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

5.	Robert M. Hertzberg Senator, 18th Senate District	N/I	<p>Honorable Gail Deckreon and Honorable Tricia Ann Bigelow:</p> <p>I appreciate the opportunity to comment on the proposed rules related to traffic criminal procedures, notices, and fees. It is encouraging to see continued work by Judicial Council to make rules of the court easier for individuals to seek remedies and to make amends for vehicle violations.</p> <p>I reviewed the three traffic proposals, and generally appreciate the clarity of notices, timeliness, standardization, and attempts to move certain actions online. It is a great frustration that county courts have different rules and forms, not to mention the near-total lack of online uniformity and access to county courts. These proposals will make it clearer to all Californians what their rights are and how to seek fee waivers or ability to pay determinations and will take a modest, but important, step toward modernizing the courts.</p> <p>These proposals will hopefully reduce the crushing burden of fines and fees for low income individuals by facilitating ability to pay determinations and fee waivers. The modest online tool for requesting a payment plan should be mandatory, not optional, for each of the 58 courts. These are important, if small, steps in the right direction.</p> <p>Unfortunately, the proposals do nothing to</p>	<p>The committee appreciates Senator Hertzberg’s input. It declines to pursue the suggestion to make online interfaces mandatory because courts are not required to offer installment payment plans by statute and because some courts do not currently have the technological capabilities to offer online installment plans. The committee declines to pursue the remainder of these suggestions at this time because they are outside the scope of this forms proposal. The committee may consider these suggestions in drafting future legislative proposals.</p>
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

			<p>eliminate the widespread use – and abuse – of the license suspensions to collect-court ordered debt. The United States Department of Justice indicated last year that this practice is of questionable constitutionality. Years ago, license suspensions may have seemed like a useful tool for collection court-ordered debt, but now we know the negative impact it has on millions of Californians.</p> <p>The fact is, a suspended license means lost income, lost employment, and generally increases the burden of poverty. It’s much harder to get childcare, education, and work without transportation. And state data shows that the tool unfairly burdens communities of poverty and color.</p> <p>This is an issue about which I am passionate. I have carried several pieces of legislation over last two years addressing injustice. And until we start using better, fairer, punishments that more closely fit the nature of these crimes (i.e., minor traffic offenses), we will not have the fair justice system that Californians deserve.</p>	
6.	<p>Superior Court of California, El Dorado County By Jackie Davenport Assistant Court Executive Officer</p>	N	<p>Please see El Dorado Court’s comments to the proposed rule changes. We disagree with the proposals to allow a defendant to request ability to pay determinations/hearings and therefore disagree with the proposed language to allow a defendant to request a determination on ability to pay any time before the final payment.</p>	<p>The committee appreciates the court’s input. While this forms proposal does notify defendants of their right to request an ability-to-pay determination, the court’s comments are directed primarily to proposed rule 4.335’s ability-to-pay provisions. Proposed rule 4.335 circulated concurrently with this forms proposal, and the committee has provided specific responses to the court’s concerns in the comment chart attached to</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

				the council report for that proposal.
7.	Superior Court of California, Los Angeles County	AM	<p><b>Suggested Modifications:</b></p> <p>On both forms we suggest changing line 2. from:</p> <p>“My court appearance date has not passed,...”</p> <p>to</p> <p><b>“My court appearance or extension date has not passed,...”</b></p> <p>Also, we propose removing the reference to a “misdemeanor” Vehicle Code section 40508 as reflected under, “5. Terms of Agreement,” about 2/3rds of the way down the page on both forms TR-300 (online) and TR-310 (online). A Vehicle Code section 40508 charge can be added as either a misdemeanor or an infraction, and therefore we recommend rewording that line to allow courts the flexibility to charge as either.</p> <p>Suggested change:</p> <p>“Charge me with a misdemeanor under Vehicle Code section 40508.”</p> <p>to</p> <p><b>“Add an additional charge under Vehicle Code section 40508.”</b></p>	<p>The committee appreciates the court’s input.</p> <p>The committee agrees and has incorporated the suggestion into the proposal.</p> <p>Because a defendant may be charged with an infraction or a misdemeanor under Vehicle Code section 40508, the committee agrees with this suggestion and has incorporated it into the proposal.</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<p><b>Request for Specific Comments:</b></p> <ul style="list-style-type: none"><li>• <b>Does the proposal appropriately address the stated purpose?</b></li></ul> <p>No comment.</p> <ul style="list-style-type: none"><li>• <b>Could forms TR-300 and TR-300 (online) or Forms TR-310 and TR-310 (online) be combined to provide for one set of forms for each type of installment payment agreement, while also serving as forms that may be used both at the clerks counter and online.</b></li></ul> <p>Yes, we feel that the creation of new “online forms” are not necessary and possibly confusing.</p> <p>There are already existing Rules of Court and Laws which would require a local court to create an electronic version of an already existing Judicial Council form that mirrors the non-electronic version. Also, if a member of the public provided the online version of the form at a traffic window, the Clerk’s Office would be obligated to accept the form anyway, rendering the distinction between the forms moot. <b>We suggest making one form that applies to all applications. Electronic advisements could be added in an “as applicable” format.</b></p> <p>References:</p>	<p>No response required.</p> <p>The committee revisited the possibility of combining the two sets of forms, but ultimately concluded that it would not be feasible for two reasons: (1) there is insufficient space on the front of the form to provide alternate instructions and (2) providing alternate instructions on the form, depending on whether the installment payment plan is entered into at the clerk’s counter or through an online interface, might cause unnecessary confusion.</p> <p>The online forms would not be available to the public on the Judicial Council website. As provided in proposed rule 4.108, the online forms are intended for use by the courts only in online interfaces, which would generate and populate the forms. They are not intended to be electronically filed into the court through other means. Accordingly, the committee does not anticipate that a member of the public will present the online</p>
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<p><u>Rule 1.31(e)</u>          “Except as provided in rule 3.52(6), concerning court fee waiver orders, rule 5.504, concerning court orders in juvenile court proceedings, and rule 7.101.5, concerning court orders in proceedings under the Probate Code, <b>courts may not require the use of an altered mandatory Judicial Council form in place of the Judicial Council form.</b> However, a judicial officer may modify a Judicial Council form order as necessary or appropriate to adjudicate a particular case.” (emphasis added)</p> <p><u>Government Code section 68511</u>          “The Judicial Council may prescribe by rule the form and content of forms used in the courts of this state. <b>When any such form has been so prescribed by the Judicial Council, no court may use a different form which has as its aim the same function as that for which the Judicial Council’s prescribed form is designed.</b> The Judicial Council shall report periodically to the Legislature any statutory changes needed to achieve uniformity in the forms used in the courts of this state.” (emphasis added)</p> <ul style="list-style-type: none"> <li>• <b>Are there any additional forms, procedures, instructions or advisements that should be added to the proposal.</b></li> </ul> <p>No comment.</p> <ul style="list-style-type: none"> <li>• <b>Would the proposal provide a cost</b></li> </ul>	<p>form at the clerk’s counter.</p> <p>Although courts must use mandatory Judicial Council forms and may not require the use of an altered mandatory Judicial Council form (Gov. Code, § 68511; Cal. Rules of Court, rule 1.31(e)), the Judicial Council may authorize the use of alternative mandatory forms by rule of court. (See, e.g., Cal. Rules of Court, rule 7.101.)</p> <p>No response required.</p>
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<p><b>savings?</b></p> <p>No.</p> <p>• <b>Would the proposal increase costs?</b></p> <p>Yes.</p> <p><b>Major Costs to CMS for implementation and programming due to possible ability to pay hearings:</b></p> <ol style="list-style-type: none"> <li>1. The court would have to create at least two hearing types to define what stage the defendant is requesting the ability to pay hearing.</li> <li>If made prior to a failure to pay status, the costs have to be covered by operations. If the case has already been referred to collections, then the costs could be recoverable as a collections issue.</li> <li>2. Additional costs would be incurred by updating our current forms to conform to the latest JC version for printed and imaged use.</li> <li>3. Programming would be needed for new rulings, change of bail amounts, calendaring, and notices for rulings.</li> <li>4. Interface programming would be needed to update bail amounts as they change in ETRS and PRD.</li> <li>5. Programming would be needed to interface with GC Services systems, so that cases referred</li> </ol>	<p>No response required.</p> <p>Some of the anticipated additional costs and burdens identified by the court appear to be a result of proposed rule 4.335 on ability to pay determinations. The forms give defendants notice that they may request an ability-to-pay determination based on changed circumstances while the installment payment plan remains pending. To the extent that these forms are implicated, it would be because the forms give defendants notice that they may request an ability to pay determination based on changed circumstances while the installment payment plan remains pending. Other costs identified may be related to updating the court's interface for online traffic installment forms.</p>
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<p>to collections can be set on the court's calendar for an ability to pay hearing. Cases may need to be returned to GCS after the hearing.</p> <p><b>Operational Costs:</b></p> <ol style="list-style-type: none"><li>1. Costs for processing the initial requests would be negligible, since our Court already provides the program. If the Judicial Council mandated the payment plan for traffic school, costs would increase temporarily because the program would have to be developed and implemented.</li><li>2. For our court, the process has been established and has been fairly successful. Minor additional training would be needed.</li><li>3. Staffing increases for calendaring the new hearing types, providing notice of rulings, and cashiering could be incurred.</li></ol> <ul style="list-style-type: none"><li>• <b>What would be the implementation requirements be for courts?</b></li></ul> <p>Would include:</p> <ul style="list-style-type: none"><li>▪ CTS – Programming updates to the existing form, development of new hearing types, calendaring, financial interface and changes to the bail amount. Integration with GC Services.</li><li>▪ Operational Implementation – Procedure development and training.</li></ul>	
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

			<ul style="list-style-type: none"> <li>▪ Possible dedication of specific courtrooms to hear the ability to pay hearings.</li> <li>• <b>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></li> </ul> <p>No. Since our resources are divided between the new CMS and other issues, we may need more time to implement.</p> <ul style="list-style-type: none"> <li>• <b>How well would this proposal work in courts of different sizes.</b></li> </ul> <p>No comment.</p>	<p>Because the committee recognizes that some courts may need additional time to implement this proposal, it has recommended an extended implementation date. Specifically, that courts are urged to implement this proposal as soon as reasonably possible, but no later than May 1, 2017.</p> <p>No response required.</p>
8.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, Joint Rules Subcommittee	AM	<p>General Comment:</p> <ol style="list-style-type: none"> <li>1. The JRS <i>strongly</i> recommends that the effective date of the new rule and forms discussed in this proposal be changed to July 1, 2017 to provide the trial courts with additional time to successfully and comprehensively implement this and the other urgent traffic proposals. While the JRS appreciates the authoring committees adjusting their timeline to present at the October 2016 Judicial Council business meeting so that the trial courts would have two months to implement, doing so would not actually give the courts two full months for implementation. After taking into</li> </ol>	<p>The committee appreciates the input of the Joint Rules Subcommittee.</p> <p>Because the committee recognizes that some courts may need additional time to implement this proposal, it has recommended an extended implementation date. Specifically, that courts are urged to implement this proposal as soon as reasonably possible, but no later than May 1, 2017.</p>

**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

			<p>consideration the four court holidays and additional time that court staff will take for vacation during November and December, the courts will have significantly less than two full months for implementation.</p> <p>Also, accurate and comprehensive implementation will require more than two months for most trial courts and, especially so, for the smaller courts. An implementation period of less than two months creates significant challenges and burdens for courts of all sizes. For smaller courts, the following changes were specifically identified:</p> <ul style="list-style-type: none"><li>• Smaller courts do not have internal technology staff to assist in making changes to forms or case management systems. It would be costly to expect any vendors to quickly expedite any changes including necessary programming modifications.</li><li>• Small court management teams may only consist of two to three individuals (at best) that need additional time to develop processes and appropriate training for staff in and out of the courtroom. Those same individuals are also responsible for attempting to work with technology vendors to implement changes on courtesy notices, programming, and in-house forms.</li><li>• Increased costs that have not been built into the 2016-17 budget allocations.</li><li>• Significant costs for printing, postage and mailing.</li></ul>	
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<ul style="list-style-type: none"> <li>• Increased costs for related vendor services.</li> <li>• Increased staff workload to process notices, applications, hearing requests, other new requirements.</li> <li>• Additional costs and time associated with the modification of case management systems.</li> </ul> <p>While the JRS sees the urgency in modifying the rules of court and related forms, it strongly recommends the implementation date be changed to July 1, 2017 so that the courts have the ability to implement the changes accurately and effectively.</p> <p><b>Suggested Modification:</b></p> <p><b>1. Regarding the “Advisement of Rights” section of forms TR-300 (online) and TR-310 (online), the JRS recommends adding “(if available)” and replacing “suspend all” with “reduce” as indicated by the highlighted text below:</b></p> <p><u>To ask for community service (if available) instead of paying the total fine;</u></p> <p><u>...If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total fine, or <del>suspend all</del> or reduce part of the fine.</u></p> <p>Some trial courts do not offer community</p>	<p>The committee agrees and has incorporated the suggestion onto the forms.</p>
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**SP16-10**

**Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees**

All comments are verbatim unless indicated by an asterisk (\*).

		<p>service. By adding “if available” as indicated above, the revised forms would be more clear in conveying that the courts are not mandated to provide community service as an alternative to payment.</p> <p>The JRS recommends eliminating references to suspension of the entire fine because it believes that it would be inappropriate to remove all penalties in adjudicating an infraction violation based on the financial status of the defendant. One who has been adjudicated to have violated the law should suffer some detriment, even if, based on the defendant’s financial circumstances, it is appropriate to reduce the penalty to a nominal amount in one payment or over time, or to order community service.</p>	<p>In exercising discretion, a judge may suspend the base fine in whole or part. These forms are intended to correspond with the exercise of judicial discretion. However, even if a judge were to suspend the full amount of the base fine, the defendant would still have to pay any mandatory fees required by statute.</p>
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DRAFT

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

CEQA Actions: Technical Rule Amendments to Implement SB 836

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee and Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Jenny Wald, 415-865-8713, [jenny.wald@jud.ca.gov](mailto:jenny.wald@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: #1, #8, and #9, Appellate Advisory Committee annual agenda

Project description from annual agenda: Improve Rules and Forms (review legislative changes and make recommendations for necessary changes); E-Filing Rules and Modernization of Appellate E-Filing Rules.

*If requesting July 1 or out of cycle, explain:*

The Legislature enacted SB 836 earlier this year, which requires the Judicial Council to adopt rules, on or before July 1, 2017, implementing the expedited CEQA judicial review procedures for "capitol annex projects."

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

As discussed in the report, the proposed rule amendments do not need to be circulated for public comment before being recommended for adoption because they constitute "a minor substantive change that is unlikely to create controversy." (Cal. Rules of Court, rule 10.22(d)(2)).



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 15–16, 2016

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Title	Agenda Item Type
CEQA Actions: Technical Rule Amendments to Implement Senate Bill 836	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.701, 8.702, and 8.703	January 1, 2017
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	November 7, 2016
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Contact
Jenny Wald, Attorney	Jenny Wald, 415-865-8713 <a href="mailto:jenny.wald@jud.ca.gov">jenny.wald@jud.ca.gov</a>

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### Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the rules regarding expedited review of certain cases under the California Environmental Quality Act (CEQA). The amendments will fulfill the Judicial Council’s obligation under legislation enacted earlier this year to adopt rules to implement procedures for the expedited resolution of CEQA cases challenging “capitol annex projects.”

### Recommendation

1. The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2017 Amend rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.701, 8.702, and 8.703 of the California Rules of Court

relating to expedited review of CEQA challenges to “environmental leadership” and “Sacramento arena” projects by adding references to new statutory provisions establishing expedited review of such challenges to “capitol annex projects”; and

2. The Appellate Advisory Committee also recommends that the Judicial Council, effective January 1, 2017, amend rule 8.701 to ensure CEQA appellate rules conform to amendments to the appellate electronic filing rules approved by the Judicial Council at its October 2016 meeting.

The text of the amended rules is attached at pages 4–9.

### **Previous Council Action**

In 2011, the Judicial Council adopted rule 8.497 to implement Assembly Bill 900 (Stats. 2011, ch. 354), which created an expedited judicial review procedure in the Court of Appeal for CEQA cases relating to “environmental leadership projects.” (Pub. Resources Code, § 21185.)

In 2013, the Legislature adopted legislation that changed the expedited CEQA review procedure in environmental leadership cases and also established expedited review in cases relating to a new sports arena in Sacramento (Senate Bill 743, Stats. 2013, ch. 386). SB 743 required the Judicial Council to adopt rules providing for the resolution of these cases, including any potential appeals, within 270 days of certification of the record of proceedings (Pub. Resources Code, §§ 21185 and 21168.6.6). The Judicial Council responded to SB 743 with the adoption of rules 3.1365, 3.2220–3.2231, and 8.700–8.705, effective July 1, 2014.<sup>1</sup>

At its meeting on October 27, 2016, the council approved amendments to the rules relating to electronic filing and service in the appellate courts that, among other things, make electronic filing mandatory unless otherwise ordered by the court or provided by local rule.

### **Rationale for Recommendation**

Senate Bill 836 (Stats. 2016, ch. 31),<sup>2</sup> which became effective on June 28, 2016, contains provisions similar to those enacted by SB 743 from 2013. It requires that the Judicial Council adopt rules, on or before July 1, 2017, that implement the expedited CEQA judicial review procedures for resolution of CEQA challenges to “capitol building annex projects” within 270 days from the date of certification of the administrative record. (Pub. Resources Code, § 21189.51; see Pub. Resources Code, §§ 21185 and 21168.6.6.) These recommended rule amendments would fulfill the Judicial Council’s obligation under SB 836 by adding references to the new “capitol building annex” statutes to the existing CEQA rules.

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<sup>1</sup> The report to the Judicial Council regarding these rules is available at [www.courts.ca.gov/documents/jc-20140425-itemM.pdf](http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf).

<sup>2</sup> SB 836 is available at [www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0801-0850/sb\\_0836\\_bill\\_20160627\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0801-0850/sb_0836_bill_20160627_chaptered.pdf).

The Appellate Advisory Committee also recommends amending one of the existing CEQA rules, rule 8.701, to conform it to amendments to the appellate electronic filing rules approved by the Judicial Council at its October 2016 meeting. Currently, rule 8.701 provides that the court may order electronic filing and service. Amended rule 8.71, which takes effect January 1, 2017, makes electronic filing mandatory unless otherwise ordered by the court or provided by local rule. Rule 8.701 would be conformed to rule 8.71 by similarly requiring electronic filing in all cases covered by the CEQA rules. Rule 8.701 would also be amended to provide by rule for electronic service on consenting parties, rather than requiring the court to order such service in these CEQA cases.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal has not been circulated for comment because the recommended amendments are minor and technical in nature. Given that these rules are necessary to fulfill statutorily mandated obligations or conform the CEQA rules to recent amendments to the e-filing rules, these changes are also unlikely to be controversial. It is therefore within the Judicial Council’s purview to adopt the rule amendments without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

### **Implementation Requirements, Costs, and Operational Impacts**

Implementing the new legislation requiring expedited review of CEQA challenges to “capitol annex projects” may generate costs and operational impacts for both the trial courts and the Courts of Appeal in which the proceedings governed by these statutes are filed. The committee does not anticipate that this proposal will result in any additional costs to the courts.

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.701, 8.702, and 8.703, at pages 4–9



Rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.701, 8.702, and 8.703 of the California Rules of Court are amended, effective January 1, 2017, to read:

**Division 22. Petitions Under the California Environmental Quality Act**

**Chapter 1. General Provisions**

**Rule 3.2200. Application**

Except as otherwise provided in chapter 2 of the rules in this division, for which govern actions under Public Resources Code sections 21168.6, ~~and 21178–21189.3, and 21189.50–21189.57,~~ the rules in this chapter apply to all actions brought under the California Environmental Quality Act (CEQA) as set forth in division 13 of the Public Resources Code.

**Chapter 2. California Environmental Quality Act Proceedings Under Public Resources Code Sections 21168.6, ~~and 21178–21189.3, and 21189.50–21189.57~~**

**Article 1. General Provisions**

**Rule 3.2220. Definitions and application**

**(a) Definitions**

(1)–(2) \*\*\*

(3) A “capitol building annex project” means a capitol building annex project as defined by Public Resources Code section 21189.50.

**(b) Proceedings governed**

The rules in this chapter govern actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report or the grant of any project approvals for the Sacramento arena project, ~~or a leadership project, or a capitol building annex project.~~ Except as otherwise provided in Public Resources Code sections 21168.6, ~~and 21178–21189.3, and 21189.50–21189.57~~ and these rules, the provisions of the Public Resources Code and the CEQA Guidelines adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et seq.) governing judicial actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with the California Environmental Quality Act and the rules of court generally apply in proceedings governed by this rule.

**(c) \*\*\***

1 **Rule 3.2221. Time**

2  
3 **(a) Extensions of time**

4  
5 \*\*\*

6  
7 **(b) Extensions of time by parties**

8  
9 If the parties stipulate to extend the time for performing any acts in actions governed by  
10 these rules, they are deemed to have agreed that the time for resolving the action may be  
11 extended beyond 270 days by the number of days by which the performance of the act has  
12 been stipulated to be extended, and to that extent to have waived any objection to  
13 noncompliance with the deadlines for completing review stated in Public Resources Code  
14 sections 21168.6.6(c)–(d), ~~and 21185,~~ and 21189.51. Any such stipulation must be  
15 approved by the court.  
16

17 **(c) Sanctions for failure to comply with rules**

18  
19 If a party fails to comply with any time requirements provided in these rules or ordered by  
20 the court, the court may issue an order to show cause as to why one of the following  
21 sanctions should not be imposed:  
22

23 (1)–(2) \*\*\*

24  
25 (3) If the failure to comply is by respondent or a real party in interest, removal of the  
26 action from the expedited procedures provided under Public Resources Code  
27 sections 21168.6.6(c)–(d), ~~and 21185,~~ and 21189.51, and these rules; or  
28

29 (4) \*\*\*  
30

31 **Rule 3.2222. Filing and service**

32  
33 **(a)–(c) \*\*\***

34  
35 **(d) Service of petition in action regarding leadership project and capitol building annex**  
36 **project**

37  
38 If the petition or complaint in an action governed by these rules and relating to a leadership  
39 project or a capitol building annex project is not personally served on any respondent  
40 public agency, any real party in interest, and the Attorney General within three court days  
41 following filing of the petition, the time for filing petitioner’s briefs on the merits provided  
42 in rule 3.2227(a) and rule 8.702(e) will be decreased by one day for every additional two

1 court days in which service is not completed, unless otherwise ordered by the court for  
2 good cause shown.

3  
4 (e) \*\*\*

5  
6  
7 **Rule 3.2223. Petition**

8  
9 In addition to any other applicable requirements, the petition must:

10  
11 (1) On the first page, directly below the case number, indicate that the matter is either a  
12 “Sacramento Arena CEQA Challenge,” ~~or an “Environmental Leadership CEQA~~  
13 Challenge,” or a “Capitol Building Annex Project”;

14  
15 (2) State ~~either~~ one of the following:

16  
17 (A) \*\*\*

18  
19 (B) The project at issue was certified by the Governor as a leadership project under  
20 Public Resources Code sections 21182–21184 and is subject to this rule; or

21  
22 (C) The project at issue is a capitol building annex project as defined by Public  
23 Resources Code section 21189.50 and is subject to this rule;

24  
25 (3)–(4) \*\*\*

26  
27  
28 **Chapter 11. Review of California Environmental Quality Act Cases Under Public**  
29 **Resources Code Sections 21168.6.6, ~~and 21178–21189.3,~~ and 21189.50–21189.57.**

30  
31 **Rule 8.700. Definitions and application**

32  
33 (a) **Definitions**

34  
35 As used in this chapter:

36  
37 (1) An “environmental leadership development project” or “leadership project” means a  
38 project certified by the Governor under Public Resources Code sections 21182–  
39 21184.

40  
41 (2) The “Sacramento entertainment and sports center project” or “Sacramento arena  
42 project” means the entertainment and sports center project as defined by Public

1 Resources Code section 21168.6.6, for which the proponent provided notice of  
2 election to proceed under that statute as described in section 21168.6.6(j)(1).

3  
4 (3) A “capitol building annex project” means a capitol building annex project as defined  
5 by Public Resources Code section 21189.50.

6  
7 **(b) Proceedings governed**

8  
9 The rules in this chapter govern appeals and writ proceedings in the Court of Appeal to  
10 review a superior court judgment or order in an action or proceeding brought to attack,  
11 review, set aside, void, or annul the certification of the environmental impact report or the  
12 granting of any project approvals for an environmental leadership development project, ~~or~~  
13 the Sacramento arena project, or a capitol building annex project.

14  
15  
16 **Rule 8.701. Filing and service**

17  
18 **(a) Service**

19 \*\*\*

20  
21  
22 **(b) Electronic filing and service**

23  
24 ~~Notwithstanding rules 8.71(a) and 8.73, the court may order that:~~

25  
26 (1) In accordance with rule 8.71, all parties except self-represented parties are required  
27 to file all documents ~~be filed~~ electronically except as otherwise provided by these  
28 rules, the local rules of the reviewing court, or court order. Notwithstanding rule  
29 8.71(b), a court may order a self-represented party to file documents electronically.

30  
31 (2) All documents must be served electronically on parties who  
32 have ~~stipulated~~ consented to electronic service or who are otherwise required by law  
33 or court order to accept electronic service. All parties represented by counsel are  
34 deemed to have ~~stipulated~~ consented to electronic service. All self-represented  
35 parties may so ~~stipulate~~ consent.

36  
37 **(c) Exemption from extension of time**

38 \*\*\*

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40  
41 **Rule 8.702. Appeals**

42  
43 **(a) Application of general rules for civil appeals**

44 \*\*\*

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**(b) Notice of appeal**

(1) \*\*\*

(2) *Contents of notice of appeal*

The notice of appeal must:

- (A) State that the superior court judgment or order being appealed is governed by the rules in this chapter;
- (B) Indicate whether the judgment or order pertains to the Sacramento arena project, ~~or a leadership project,~~ or a capitol building annex project; and
- (C) If the judgment or order being appealed pertains to a leadership project, provide notice that the person or entity that applied for certification of the project as a leadership project must make the payments required by rule 8.705.

(c)–(e) \*\*\*

**(f) Briefing**

(1)–(3) \*\*\*

(4) *Extensions of time to file briefs*

If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days by the number of days by which the parties stipulated to extend the time for filing the brief and, to that extent, to have waived any objection to noncompliance with the deadlines for completing review stated in Public Resources Code sections 21168.6.6(c)–(d), ~~and 21185,~~ and 21189.51 for the duration of the stipulated extension.

(5) \*\*\*

**(g) Oral argument**

\*\*\*

1  
2  
3 **Advisory Committee Comment**

4 **Subdivision (b).** It is very important to note that the time period to file a notice of appeal under this rule  
5 is the same time period for filing most postjudgment motions in a case regarding the Sacramento arena  
6 project, and in a case regarding a leadership project or capitol building annex project, the deadline for  
7 filing a notice of appeal may be earlier than the deadline for filing a motion for a new trial, a motion for  
8 reconsideration, or a motion to vacate the judgment.  
9

10 **Rule 8.703. Writ proceedings**

11  
12 **(a) Application of general rules for writ proceedings**

13  
14 \*\*\*

15  
16 **(b) Petition**

17  
18 (1) \*\*\*

19  
20 (2) *Contents of petition*

21  
22 In addition to any other applicable requirements, the petition must:

- 23  
24 (A) State that the superior court judgment or order being challenged is governed by  
25 the rules in this chapter;  
26  
27 (B) Indicate whether the judgment or order pertains to the Sacramento arena  
28 project, ~~or~~ a leadership project, or a capitol building annex project; and  
29  
30 (C) If the judgment or order pertains to a leadership project, provide notice that the  
31 person or entity that applied for certification of the project as a leadership  
32 project must make the payments required by 8.705.  
33  
34

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** November 18, 2016

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Rules: Miscellaneous Technical Changes (Amend Cal. Rules of Court, rules 5.24, 5.340, 8.304, 8.528, and 10.701)

*Committee or other entity submitting the proposal:*

Judicial Council staff

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990 [susan.mcmullan@jud.ca.gov](mailto:susan.mcmullan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: N/A

Project description from annual agenda: N/A

*If requesting July 1 or out of cycle, explain:*

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 15–16, 2016

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Title	Agenda Item Type
Rules: Miscellaneous Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.24, 5.340, 8.304, 8.528, and 10.701	January 1, 2017
Recommended by	Date of Report
Judicial Council staff	October 24, 2016
Susan R. McMullan, Senior Attorney Legal Services	Contact
	Susan R. McMullan, 415-865-7990 <a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>

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### Executive Summary

Various Judicial Council advisory committees, members of the public, and Judicial Council staff have identified errors in rules resulting from typographical errors, and changes resulting from legislation and previous rule amendments. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

### Recommendation

The staff to the Judicial Council recommends that the council, effective January 1, 2017:

1. Effective January 1, 2013, the Judicial Council adopted rule 5.24. *Joinder of persons claiming interest*, as part of the restructured and reorganized title V of the California Rules of Court. The council consolidated a series of joinder rules (rules 5.150, 5.152, 5.154, 5.156, 5.158, 5.160) under rule 5.24 and subsequently repealed them when rule 5.24 took effect. The Family and Juvenile Law Advisory Committee recently became aware of an error in the construction of subdivision (e)(1)(A) in rule 5.24. As currently written, subdivision (e)(1)(A) is an incomplete sentence, which has caused confusion about when a court must



join a person as a party to the proceeding. The committee recommends that subdivision (e)(1)(A), be clarified as provided in the attached.

2. Amend rules 5.340 and 10.701 of the California Rules of Court, which set forth the minimum education requirements of child support commissioners and of subordinate judicial officers respectively. The rules contain outdated references to rule 10.501. Rule 10.501, which replaced the former rule 970, effective June 30, 2006, as part of the council's reorganization of the rules, was repealed on October 20, 2006. At the August 31, 2007, and October 26, 2007, council meetings, a number of rules were adopted, amended, and/or renumbered to, among other things, address the minimum training requirements of subordinate judicial officers as laid out in the former rule 10.501. This included the adoption of rule 10.462, which contains the provisions previously addressed in former rule 10.501. The current rule 10.501, effective January 1, 2010, addresses the maintenance of budget and management information. Consequently, as rules 5.340 and 10.701 currently stand, they refer to an unrelated rule, which leads to confusion. As such, the references in rules 5.340 and 10.701 to rule 10.501 should be changed to reference rule 10.462.
3. Amend the advisory committee comment to rule 8.304 to correct a reference from "(rule 8.700 et seq.)" to "(rule 8.800 et seq.)"; and
4. Amend rule 8.528, which addresses disposition of a matter by the Supreme Court after grant of review. Prior to July 1, 2016, California Rules of Court, rule 8.1105(e) provided that when the Supreme Court granted review of a published Court of Appeal opinion, that opinion was automatically depublished: "Unless otherwise ordered . . . an opinion is no longer considered published if the Supreme Court grants review." Effective July 1, 2016, the Supreme Court amended rule 8.1105 to eliminate this automatic depublication provision and add a new provision stating instead that "Unless otherwise ordered . . . [g]rant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court's certification of the opinion for full or partial publication." Additional new language was also added to rule 8.1105 providing that, "The Supreme Court may also order depublication of part of an opinion at any time after granting review." Rule 8.528 was not modified in conjunction with the amendments to rule 8.1105. Subdivision (b)(3) of rule 8.528 should be amended to address what happens when the Supreme Court dismisses review of a case in which review is granted on or after July 1, 2016.

The revised rules are attached at pages 4–5.

### **Previous Council Action**

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

### **Rationale for Recommendation**

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

### **Comments, Alternatives Considered, and Policy Implications**

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

### **Implementation Requirements, Costs, and Operational Impacts**

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.24, 5.340, 8.304, 8.528, and 10.701, at pages 4–5

Rules 5.24, 5.340, 8.304, 8.528, and 10.701 of the California Rules of Court are amended, effective January 1, 2017, to read:

1 **Rule 5.24. Joinder of persons claiming interest**

2  
3 A person who claims or controls an interest in any matter subject to disposition in the  
4 proceeding may be joined as a party to the family law case only as provided in this  
5 chapter.

6  
7 **(a)–(d) \* \* \***

8  
9 **(e) Court order on joinder**

10  
11 (1) *Mandatory joinder*

12  
13 (A) The court must order that a person be joined as a party to the  
14 proceeding if ~~any person~~ the court discovers that person has physical  
15 custody or claims custody or visitation rights with respect to any minor  
16 child of the marriage, domestic partnership, or to any minor child of the  
17 relationship.

18  
19 (B) \* \* \*

20  
21 (2)–(3) \* \* \*

22  
23 **Rule 5.340. Judicial education for child support commissioners**

24  
25 Every commissioner whose principal judicial assignment is to hear child support matters  
26 must attend the following judicial education programs:

27  
28 (1)–(3) \* \* \*

29  
30 (4) *Other judicial education*

31  
32 The requirements of this rule are in addition to and not in lieu of the requirements  
33 of rule ~~10.501(e)~~ 10.462.

34  
35 **Rule 8.304. Filing the appeal; certificate of probable cause**

36  
37 **(a)–(c) \* \* \***

38  
39 **Advisory Committee Comment**

40  
41 **Subdivision (a).** Penal Code section 1235(b) provides that an appeal from a judgment or  
42 appealable order in a “felony case” is taken to the Court of Appeal, and Penal Code section 691(f)  
43 defines “felony case” to mean “a criminal action in which a felony is charged. . . .” Rule

1 8.304(a)(2) makes it clear that a “felony case” is an action in which a felony is charged *regardless*  
2 *of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or  
3 under the rules governing appeals to the appellate division of the superior court  
4 (rule ~~8.700~~ 8.800 et seq.) is answered simply by examining the accusatory pleading: if that  
5 document charged the defendant with at least one count of felony (as defined in Penal Code,  
6 section 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under  
7 this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

8  
9 \* \* \*

10  
11 **Rule 8.528. Disposition**

12  
13 (a) \* \* \*

14  
15 (b) **Dismissal of review**

16  
17 (1)–(2) \* \* \*

18  
19 (3) ~~After~~ An order dismissing review, does not affect the publication status of the  
20 Court of Appeal opinion remains unpublished unless the Supreme Court  
21 orders otherwise.

22  
23 (c)–(f) \* \* \*

24  
25 **Rule 10.701. Qualifications and education of subordinate judicial officers**

26  
27 (a)–(b) \* \* \*

28  
29 (c) **Education**

30  
31 A subordinate judicial officer must comply with the education requirements of any  
32 position to which he or she is assigned, even if it is not his or her principal  
33 assignment. Such requirements include the following, as applicable: rules 5.30,  
34 5.340, and ~~10.501~~ 10.462 of the California Rules of Court, and Welfare and  
35 Institutions Code section 304.7.

36  
37 (d) \* \* \*