Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 25-107
For business meeting on July 18, 2025

Title
Jury Instructions: Civil Jury Instructions (release 47)

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

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

Report Type
Action Required

Effective Date
July 18, 2025

Date of Report
June 10, 2025

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Executive Summary

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

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective July 18, 2025, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court:

1. Revisions to 15 instructions and verdict forms: CACI Nos. 1621, 1803, 1804A, 1804B, 1805, 3066, VF-3035, 3704, 3713, 4013, 4306, 4307, 4409, 4601, and 4602; and

2. Addition of 2 instructions and 2 verdict forms: CACI Nos. 1013, VF-1003, 1930, and VF-1930.

A table of contents and the new and revised civil jury instructions and verdict forms are attached at pages 6–78.

Relevant Previous Council Action

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

This is release 47 of *CACI*. The council approved release 46 at its November 2024 meeting.

Analysis/Rationale

A total of 19 instructions and verdict forms are presented in this release. In addition, at its meeting on June 3, 2025, the Judicial Council's Rules Committee approved minor changes to 15 other instructions under a delegation of authority from the council to the Rules Committee.[2]

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

Revised instructions

CACI No. 1621, Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements

The Supreme Court in *Downey v. City of Riverside*[3] held that a bystander could recover for negligent infliction of emotional distress even if the bystander was not physically present at the scene of the incident and was not aware of the defendant's role in causing the victim's injury at the time of the incident. The court resolved an uncertainty in the law addressed in the Directions

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

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

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

[3] (2024) 16 Cal.5th 539, 544 [323 Cal.Rptr.3d 109, 551 P.3d 1109].

for Use about the threshold requirements for a bystander's perception of the event for an emotional distress claim. The decision did not affect the essential factual elements of a claim as framed in CACI No. 1601. The committee recommends deleting two paragraphs from the Direction for Use, which are no longer needed as a result of the court's clarification. The committee does not believe it is necessary to add an explication of *Downey* in the Directions for Use, but it recommends adding three entries from the case to the Sources and Authority.

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

Over the last year, the committee reexamined these four instructions in the Right of Privacy series based on an attorney's submission on the First Amendment affirmative defense stated in CACI No. 1805, *Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III)*. The committee initially concluded that all four instructions would benefit from adding an option to reference the closely related right of publicity in the introductory paragraph and recommended other clarifying changes.

During the previous comment period, the California Lawyers Association (CLA) commented that including information about the underlying privacy or publicity right for these claims was not necessary. CLA suggested that jurors instead would benefit from introductory language focused on the conduct at issue. The committee saw merit in CLA's suggestion and recirculated the instructions for comment that added the alleged wrongful conduct (misappropriation) without reference to the right of privacy or publicity to the introductory sentence of these instructions. During this comment period, the Orange County Bar Association observed that these claims are often explained by attorneys using descriptions that rely on both the underlying right and the wrongful conduct, and that deleting the underlying right from the introduction could cause confusion. The committee ultimately concluded that jurors would benefit if both pieces of information were included in the introductory sentences and has recommended refinements to the Directions for Use on how to address the right of privacy, publicity, or both, and the misappropriation at issue.

With respect to the First Amendment defense, the committee rejected calls from two commenters to rephrase the instruction using verbatim language of the legal test commonly found in case law ("transformative elements"). The committee debated the merits of phrasing the test with the language familiar to attorneys but chose to continue presenting that test in plainer English for jurors.

CACI No. 3066*, Bane Act—Essential Factual Elements, *and VF-3035

Commenters suggested a new pattern jury instruction for Bane Act claims to cover civil rights claims not based on speech alone. The committee concluded that the existing instruction could be revised to address conduct-based civil rights claims as an alternative element 1. The committee also saw support for incorporating reckless disregard into optional element 2 for conduct-based claims under the act. Public comment strongly supported the committee's recommended additions.

A commenter noted that the bracketed language choices in optional element 2 would benefit from revision. The committee recommends refinements to the bracketed options to improve clarity. The committee also recommends corresponding edits to the verdict form for this instruction (CACI No. VF-3035).

The committee also looked at issues of damages available under the Bane Act, which are discussed in the Directions for Use of CACI No. 3066, based on a federal court's recent discussion in an unpublished case.[4] The committee determined that waiting for further development in binding law was advisable. The committee will continue to monitor this issue and recommend revisions if appropriate.

New instructions and verdict forms

CACI No. 1013*, Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements, *and VF-1003

Based principally on *Fraser v. Farvid*,[5] the committee recommends a new instruction and verdict form in the Premises Liability series for a claim against a landlord by a plaintiff attacked by a dog owned by a tenant, not the landlord. The committee determined that, even if these cases are less frequently filed, a new instruction would benefit courts and litigants because the essential factual elements are different in this context from similar premises liability claims.

CACI No. 1930*, Receiving Stolen Property—Civil Liability—Essential Factual Elements, *and VF-1930

Since 2022 when the California Supreme Court decided *Siry Investment, L.P. v. Farkhondehpour*,[6] the committee has been considering a new instruction on receiving stolen property under Penal Code section 496. Because the procedural posture of *Siry Investment, L.P.* involved an appeal from default judgment, the committee chose to wait for more authority. In late 2023, a Court of Appeal in *Garrabrants v. Erhart*[7] observed that the lack of a pattern jury instruction made the instructional error in the case understandable. To assist courts and litigants, the committee now recommends a new instruction and verdict form for use in cases involving civil claims under section 496(c).

Policy implications

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

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[4] See *Loggervale v. Cnty. of Alameda* (9th Cir., Sep. 19, 2024, Nos. 23-15483, 23-15985, 23-16199) 2024 U.S. App. LEXIS 23824.

[5] (2024) 99 Cal.App.5th 760 [318 Cal.Rptr.3d 215].

[6] (2022) 13 Cal.5th 333 [296 Cal.Rptr.3d 1, 513 P.3d 166].

[7] (2023) 98 Cal.App.5th 486 [316 Cal.Rptr.3d 792], review den. Apr. 10, 2024, S283751.

Comments

The proposed additions and revisions in *CACI* circulated for comment from January 29 through March 6, 2025. Comments were received from 23 different commenters: 9 organizations or bar associations, 5 attorneys, 4 law firms, 3 individuals (not identified as attorneys), an operations manager of a superior court, and an external affairs officer of another superior court. Some commenters submitted comments on multiple instructions and verdict forms, and some commented on only a single instruction. No instruction garnered significant opposition; however, the changes to CACI No. 3066 received almost unanimous support from 15 commenters.

The committee appreciates the time taken to respond to the proposed changes. The committee evaluated all comments and, as a result, refined some of the instructions and verdict forms in this release. A chart of the comments and the committee's responses is attached at pages 79–132.

Alternatives considered

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

Fiscal and Operational Impacts

No implementation costs are associated with this proposal.

Attachments and Links

1. CACI Nos. 1013, VF-1003, 1621, 1803, 1804A, 1804B, 1805, 1930, VF-1930, 3066, VF-3035, 3704, 3713, 4013, 4306, 4307, 4409, 4601, and 4602, at pages 6–78
2. Chart of comments, at pages 79–132

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CIVIL JURY INSTRUCTIONS
Release 47; July 2025

1013. Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by [a] dog[s] kept on property owned by [***name of defendant landlord***]. To succeed, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant landlord***] owned the property;**

2. **That before the [attack/***other incident***] by the dog[s], [***name of defendant landlord***] knew or must have known that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous;**

3. **That [***name of plaintiff***] was harmed by the dog[s];**

4. **That before the [attack/***other incident***], [***name of defendant landlord***] could have taken reasonable measures to prevent the harm;**

5. **That [***name of defendant landlord***] failed to take those reasonable measures to prevent the harm; and**

6. **That [***name of defendant landlord***]'s failure to take those reasonable measures was a substantial factor in causing [***name of plaintiff***]'s harm.**

New July 2025

Directions for Use

This instruction is for use when a dog kept on a landlord's property has harmed a third person and that person claims the landlord is liable.

Sources and Authority

- "[W]e believe public policy requires that a landlord who has knowledge of a dangerous animal should be held to owe a duty of care only when he has the right to prevent the presence of the animal on the premises. Simply put, a landlord should not be held liable for injuries from conditions over which he has no control." (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 512 [118 Cal.Rptr. 741].)

- "[W]e hold that a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." (*Uccello, supra,* 44 Cal.App.3d at p. 514.)

- "The general duty of care owed by a landowner in the management of his or her property is attenuated when the premises are let because the landlord is not in possession, and usually lacks

the right to control the tenant and the tenant's use of the property. Consequently, it is well established that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent the harm." (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369 [50 Cal.Rptr.3d 40].)

- "[T]he landlord's control of the property from which the dog originated its attack, not his or her control over the property on which the attack occurred, determines the landlord's liability." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1847 [41 Cal.Rptr.2d 192].)

- "Under California law, a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person. In other words, where a third person is bitten or attacked by a tenant's dog, the landlord's duty of reasonable care to the injured third person depends on whether the dog's vicious behavior was reasonably foreseeable. Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack. [¶] In this court's view, this inquiry into the landlord's duty involves a two-step approach. The first step is to determine the landlord's knowledge of the dog's vicious nature. … [¶] The second step involves a landlord's ability to prevent the foreseeable harm." (*Donchin, supra,* 34 Cal.App.4th at p. 1838.)

- " '[A] landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person. … Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack.' This 'actual knowledge rule' can be satisfied 'by circumstantial evidence the landlord *must* have known about the dog's dangerousness as well as direct evidence he *actually* knew.' " (*Fraser v. Farvid* (2024) 99 Cal.App.5th 760, 763 [318 Cal.Rptr.3d 215], internal citations omitted, original italics.)

- "[W]here a landlord has relinquished control of property to a tenant, a 'bright line' rule has developed to moderate the landlord's duty of care owed to a third party injured on the property as compared with the tenant who enjoys possession and control. ' "Because a landlord has relinquished possessory interest in the land, his or her duty of care to third parties injured on the land is attenuated as compared with the tenant who enjoys possession and control. Thus, before liability may be thrust on a landlord for a third party's injury due to a dangerous condition on the land, the plaintiff must show that the landlord had actual knowledge of the dangerous condition in question, plus the right and ability to cure the condition." ' " (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412 [82 Cal.Rptr.3d 735].)

Secondary Sources

3 California Forms of Pleading and Practice, Ch. 23, *Animals – Civil Liability*, §§ 23.35, 23.36, 23.166 (Matthew Bender)

17 California Points & Authorities Ch. 178, *Premises Liability*, §§ 178.40, 178.41 (Matthew Bender)

VF-1003. Landlord's Liability for Dangerous Dog Kept on Property

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We answer the questions submitted to us as follows:

1. **Did [***name of defendant landlord***] own 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 landlord***] know, or must [***name of defendant landlord***] have known, before the [attack/***other incident***] that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous?**
____ Yes ____ No

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

3. **Was [***name of plaintiff***] harmed by the dog[s]?**
____ 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. **Could [***name of defendant landlord***] have taken reasonable measures before the [attack/***other incident***] to prevent the 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 landlord***] fail to take reasonable measures to prevent the 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. **Was [***name of defendant landlord***]'s failure to take reasonable measures 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].

New July 2025

Directions for Use

This verdict form is based on CACI No. 1013, *Landlord's Liability for Dangerous Dog Kept on Property*.

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

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

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

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

1621. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] suffered serious emotional distress as a result of perceiving [an injury to/the death of] [***name of victim***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] negligently caused [injury to/the death of] [***name of victim***];**

2. **That when the [***describe event, e.g., traffic accident***] that caused [injury to/the death of] [***name of victim***] occurred, [***name of plaintiff***] was [virtually] present at the scene [through [***specify technological means***]];**

3. **That [***name of plaintiff***] was then aware that the [***e.g., traffic accident***] was causing [injury to/the death of] [***name of victim***];**

4. **That [***name of plaintiff***] suffered serious emotional distress; and**

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

[*Name of plaintiff***] need not have been then aware that [***name of defendant***] had caused the [***e.g., traffic accident***].**

Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. Serious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.

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*New September 2003; Revised December 2013, June 2014, December 2014, December 2015, May 2022, July 2025**

Directions for Use

Use this instruction in a negligence case if the only damages sought are for emotional distress. The doctrine of "negligent infliction of emotional distress" is not a separate tort or cause of action. It simply allows certain persons to recover damages for emotional distress only on a negligence cause of action even though they were not otherwise injured or harmed. (See *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 928 [167 Cal.Rptr. 831, 616 P.2d 813].)

A "bystander" case is one in which a plaintiff seeks recovery for damages for emotional distress suffered as a percipient witness of an injury to another person. If the plaintiff is a direct victim of tortious conduct, use CACI No. 1620, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim—Essential Factual Elements.* For instructions for use for emotional distress arising from exposure to carcinogens, HIV, or AIDS, see CACI No. 1622, *Negligence—Recovery of Damages for*

Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Essential Factual Elements, and 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*.

This instruction should be read in conjunction with instructions in the Negligence series (see CACI No. 400 et seq.) to further develop element 1.

Whether the plaintiff had a sufficiently close relationship with the victim should be determined as an issue of law because it is integral to the determination of whether a duty was owed to the plaintiff.

Include the optional language in element 2 only if the plaintiff claims virtual presence at the scene through technological means, and specify the technology used to assist the jury in understanding the concept of "virtual" presence. (See *Ko v. Maxim Healthcare Services, Inc.* (2020) 58 Cal.App.5th 1144, 1159 [272 Cal.Rptr.3d 906].)

~~There is some uncertainty as to how the "event" should be defined in element 2 and then just exactly what the plaintiff must perceive in element 3. When the event is something dramatic and visible, such as a traffic accident or a fire, it would seem that the plaintiff need not know anything about why the event occurred. (See *Wilks v. Hom* (1992) 2 Cal.App.4th 1264, 1271 [3 Cal.Rptr.2d 803].) And the California Supreme Court has stated that the bystander plaintiff need not contemporaneously understand the defendant's conduct as *negligent,* as opposed to *harmful.* (*Bird v. Saenz* (2002) 28 Cal.4th 910, 920 [123 Cal.Rptr.2d 465, 51 P.3d 324], original italics.)~~

~~But what constitutes perception of the event is less clear when the victim is clearly in observable distress, but the cause of that distress may not be observable. It has been held that the manufacture of a defective product is the event, which is not observable, despite the fact that the result was observable distress resulting in death. (See *Fortman v. Förvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 843–844 [151 Cal.Rptr.3d 320].) In another observable-distress case, medical negligence that led to distress resulting in death was found to be perceivable because the relatives who were present observed the decedent's acute respiratory distress and were aware that defendant's *inadequate* response caused her death. (See *Keys v. Alta Bates Summit Medical Center* (2015) 235 Cal.App.4th 484, 489–490 [185 Cal.Rptr.3d 313], emphasis added.) It might be argued that observable distress is the event and that the bystanders need not perceive anything about the cause of the distress. However, these cases indicate that is not the standard. But if it is not necessary to comprehend that negligence is causing the distress, it is not clear what it is that the bystander must perceive in element 3. Because of this uncertainty, the Advisory Committee has elected not to try to express element 3 any more specifically.~~

The explanation in the last paragraph of what constitutes "serious" emotional distress comes from the California Supreme Court. (See *Molien, supra,* 27 Cal.3d at p. 928.) In *Wong v. Jing,* an appellate court subsequently held that serious emotional distress from negligence without other injury is the same as "severe" emotional distress for the tort of intentional infliction of emotional distress. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1378 [117 Cal.Rptr.3d 747]; but see *Keys, supra,* 235 Cal.App.4th at p. 491 [finding last sentence of this instruction to be a correct description of the distress required].)

Sources and Authority

- "California's rule that plaintiff's fear for his own safety is compensable also presents a strong argument for the same rule as to fear for others; otherwise, some plaintiffs will falsely claim to have feared for themselves, and the honest parties unwilling to do so will be penalized. Moreover, it is incongruous and somewhat revolting to sanction recovery for the mother if she suffers shock from fear for her own safety and to deny it for shock from the witnessed death of her own daughter." (*Dillon v. Legg* (1968) 68 Cal.2d 728, 738 [69 Cal.Rptr. 72, 441 P.2d 912].)

- "As an introductory note, we observe that plaintiffs … framed both negligence and negligent infliction of emotional distress causes of action. To be precise, however, 'the [only] tort with which we are concerned is negligence. Negligent infliction of emotional distress is not an independent tort … .' " (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 875–876 [104 Cal.Rptr.3d 352].)

- "In the absence of physical injury or impact to the plaintiff himself, damages for emotional distress should be recoverable only if the plaintiff: (1) is closely related to the injury victim, (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim and, (3) as a result suffers emotional distress beyond that which would be anticipated in a disinterested witness." (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 647 [257 Cal.Rptr. 865, 771 P.2d 814].)

~~"[T]o satisfy the second *Thing* requirement the plaintiff must experience a contemporaneous sensory awareness of the causal connection between the defendant's infliction of harm and the injuries suffered by the close relative." (*Fortman, supra,* 212 Cal.App.4th at p. 836.)~~

- "For purposes of clearing the awareness threshold for emotional distress recovery, it is awareness of an event that is injuring the victim—not awareness of the defendant's role in causing the injury—that matters. … [W]hen a bystander witnesses what any layperson would understand to be an injury-producing event—such as a car accident, explosion, or fire—the bystander may bring a claim for negligent infliction of emotional distress based on the emotional trauma of witnessing injuries inflicted on a close relative. This is true even if the bystander was not aware at the time of the role the defendant played in causing the victim's injury." (*Downey v. City of Riverside* (2024) 16 Cal.5th 539, 544 [323 Cal.Rptr.3d 109, 551 P.3d 1109].)

- "Where plaintiffs allege they were virtually present at the scene of an injury-producing event sufficient for them to have a contemporaneous sensory awareness of the event causing injury to their loved one, they satisfy the second *Thing* requirement to state a cause of action for NIED. Just as the Supreme Court has ruled a 'plaintiff may recover based on an event perceived by other senses so long as the event is contemporaneously understood as causing injury to a close relative', so too can the [plaintiffs] pursue an NIED claim where, as alleged, they contemporaneously saw and heard [their child's] abuse, but with their senses technologically extended beyond the walls of their home." (*Ko, supra,* 58 Cal.App.5th at p. 1159, internal citation omitted.)

- "[A] plaintiff need not contemporaneously understand the defendant's conduct as *negligent,* as opposed to *harmful.* But the court confused awareness of negligence, a legal conclusion, with contemporaneous, understanding awareness of the event as causing harm to the victim." (*Bird~~, supra,~~*

~~28 Cal.4th at p. 920~~ *v. Saenz* (2002) 28 Cal.4th 910, 920 [123 Cal.Rptr.2d 465, 51 P.3d 324].)

- "[W]e hold the following: Neither our precedent nor considerations of tort policy support requiring plaintiffs asserting bystander emotional distress claims to show contemporaneous perception of the causal link between the defendant's conduct and the victim's injuries. Here, [plaintiff] has alleged that when she was on the phone with her daughter she heard metal crashing against metal, glass shattering, and tires dragging on asphalt—from which she knew immediately that her daughter had been in a car accident. [Plaintiff] has also alleged that she understood that her daughter was seriously injured because she could no longer hear her after the crash and a stranger who rushed to the scene told her to quiet down so that he could find a pulse. *Thing* does not require [plaintiff] to allege that she was aware of how the defendants may have contributed to that injury." (*Downey, supra,* 16 Cal.5th at pp. 560–561.)

- "*Bird* does not categorically bar plaintiffs who witness acts of medical negligence from pursuing NIED claims. 'This is not to say that a layperson can never perceive medical negligence or that one who does perceive it cannot assert a valid claim for NIED.' Particularly, a NIED claim may arise when … caregivers fail 'to respond significantly to symptoms obviously requiring immediate medical attention.' " (*Keys*~~*, supra,* 235 Cal.App.4th at p. 489~~ *v. Alta Bates Summit Medical Center* (2015) 235 Cal.App.4th 484, 489 [185 Cal.Rptr.3d 313].)

- "The injury-producing event here was defendant's lack of acuity and response to [decedent]'s inability to breathe, a condition the plaintiffs observed and were aware was causing her injury." (*Keys, supra,* 235 Cal.App.4th at p. 490.)

- "As *Fortman* itself recognized, it is a different issue whether the bystander must also contemporaneously be aware that the injury-producing event was caused by the conduct of some third party. [¶] *Fortman* had no occasion to decide that issue. But in the course of analyzing the question before the court, *Fortman* did discuss—and distinguish—several cases that suggest the answer to that question is no." (*Downey, supra,* 16 Cal.5th at pp. 555–556; see *Fortman v. Förvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830 [151 Cal.Rptr.3d 320].)

- ~~"*Thing* does not require that the plaintiff have an awareness of what caused the injury-producing event, but the plaintiff must have an understanding perception of the 'event as causing harm to the victim.' " (*Fortman, supra,* 212 Cal.App.4th at p. 841, fn. 4.)~~

- ~~"[W]e also reject [plaintiff]'s attempt to expand bystander recovery to hold a product manufacturer strictly liable for emotional distress when the plaintiff observes injuries sustained by a close relative arising from an unobservable product failure. To do so would eviscerate the second *Thing* requirement." (*Fortman, supra,* 212 Cal.App.4th at pp. 843–844.)~~

- "Absent exceptional circumstances, recovery should be limited to relatives residing in the same household, or parents, siblings, children, and grandparents of the victim." (*Thing, supra,* 48 Cal.3d at p. 668, fn. 10.)

- "[A]n unmarried cohabitant may not recover damages for emotional distress based on such injury." (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 273 [250 Cal.Rptr. 254, 758 P.2d 582].)

- "Although a plaintiff may establish presence at the scene through nonvisual sensory perception, 'someone who hears an accident but does not then know it is causing injury to a relative does not have a viable [bystander] claim for [negligent infliction of emotional distress], even if the missing knowledge is acquired moments later.' " (*Ra v. Superior Court* (2007) 154 Cal.App.4th 142, 149 [64 Cal.Rptr.3d 539], internal citation omitted.)

- "[I]t is not necessary that a plaintiff bystander actually have witnessed the infliction of injury to her child, provided that the plaintiff was at the scene of the accident and was sensorially aware, in some important way, of the accident and the necessarily inflicted injury to her child." (*Wilks~~, supra, 2 Cal.App.4th at p. 1271~~ v. Hom* (1992) 2 Cal.App.4th 1264, 1271 [3 Cal.Rptr.2d 803].)

- " '[S]erious mental distress may be found where a reasonable man, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.' " (*Molien, supra,* 27 Cal.3d at pp. 927–928.)

- "In our view, this articulation of 'serious emotional distress' is functionally the same as the articulation of 'severe emotional distress' [as required for intentional infliction of emotional distress]. Indeed, given the meaning of both phrases, we can perceive no material distinction between them and can conceive of no reason why either would, or should, describe a greater or lesser degree of emotional distress than the other for purposes of establishing a tort claim seeking damages for such an injury." (*Wong, supra,* 189 Cal.App.4th at p. 1378.)

- "We have no reason to question the jury's conclusion that [plaintiffs] suffered serious emotional distress as a result of watching [decedent]'s struggle to breathe that led to her death. The jury was properly instructed, as explained in *Thing,* that '[s]erious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.' The instructions clarify that 'Emotional distress includes suffering, anguish, fright, … nervousness, grief, anxiety, worry, shock … .' Viewed through this lens there is no question that [plaintiffs'] testimony provides sufficient proof of serious emotional distress." (*Keys, supra,* 235 Cal.App.4th at p. 491, internal citation omitted.)

- "[W]here a participant in a sport has expressly assumed the risk of injury from a defendant's conduct, the defendant no longer owes a duty of care to bystanders with respect to the risk expressly assumed by the participant. The defendant can therefore assert the participant's express assumption of the risk against the bystanders' NIED claims." (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 731 [183 Cal.Rptr.3d 234].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1144–1158

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 11-F, *Negligent Infliction Of Emotional Distress*, ¶ 11:101 (The Rutter Group)

1 Levy et al., California Torts, Ch. 5, *Negligent Infliction of Emotional Distress*, § 5.04 (Matthew Bender)

32 California Forms of Pleading and Practice, Ch. 362, *Mental Suffering and Emotional Distress*, § 362.11 (Matthew Bender)

15 California Points and Authorities, Ch. 153*, Mental Suffering and Emotional Distress*, §§ 153.31 et seq., 153.45 et seq. (Matthew Bender)

1803. ~~Appropriation~~ Misappropriation of Name, ~~or~~ Likeness, or Identity—Essential Factual Elements

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

1. **That [*name of defendant*] used [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity];**

2. **That [*name of plaintiff*] did not consent to this use;**

3. **That [*name of defendant*] gained a commercial benefit [or some other advantage] by using [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity];**

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

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

New September 2003; Revised December 2014, November 2017, May 2020, July 2025

Directions for Use

This instruction states the common law elements of a claim for misappropriation of a person's identity. For related statutory claims under Civil Code section 3344, see CACI No. 1804A, *Misappropriation of Name, Voice, Signature, Photograph, or Likeness*, and No. 1804B, *Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*.

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. If the plaintiff is asserting misappropriation of more than one aspect of the plaintiff's identity, select the applicable bracketed terms.

Consider giving an instruction explaining consent. See generally CACI No. 1302, *Consent Explained*.

If the alleged "benefit" is not commercial, the ~~judge~~ court will need to determine whether the advantage gained by the defendant qualifies as "some other advantage."

If the plaintiff is suing under both the common law and Civil Code section 3344, the ~~judge~~ court may need to explain that a person's voice, for example, may qualify as "identity" if the voice is sufficient to cause listeners to identify the plaintiff. The two causes of action overlap, and the same conduct ~~should~~ may be covered by both.

Even if the elements are established, the First Amendment may require that the right to be protected from unauthorized publicity be balanced against the public interest in the dissemination of news and information. (~~See~~ *Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 409 [114 Cal.Rptr.2d 307].) In a closely related right-of-publicity claim, the California Supreme Court has held that an artist who is faced with a challenge to the artist's work may raise as affirmative defense that the work is protected by the First Amendment because it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame. (*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 407 [106 Cal.Rptr.2d 126, 21 P.3d 797]; see CACI No. 1805, *Affirmative Defense to ~~Use or Appropriation~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (Comedy III)*.) Therefore, if there is an issue of fact regarding a First Amendment balancing test, it most probably should be considered to be an affirmative defense. (Cf. *Gionfriddo, supra,* 94 Cal.App.4th at p. 414 ["Given the significant public interest in this sport, plaintiffs can only prevail if they demonstrate a substantial competing interest"].)

Sources and Authority

- "A common law misappropriation claim is pleaded by 'alleging: "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. [Citations.]" [Citation.]' " (*Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 97 [179 Cal.Rptr.3d 807].)

- " '[T]he right of publicity has come to be recognized as distinct from the right of privacy'. 'What may have originated as a concern for the right to be left alone has become a tool to control the commercial use and, thus, protect the economic value of one's name, voice, signature, photograph, or likeness.' 'What the right of publicity holder possesses is … a right to prevent others from misappropriating the economic value generated … through the merchandising of the 'name, voice, signature, photograph, or likeness' of the [holder].' " (*Timed Out, LLC v. Youabian, Inc.* (2014) 229 Cal.App.4th 1001, 1006 [177 Cal.Rptr.3d 773], internal citations omitted.)

- "California recognizes the right to profit from the commercial value of one's identity as an aspect of the right of publicity." (*Gionfriddo, supra,* 94 Cal.App.4th at p. 409.)

- "The common law cause of action may be stated by pleading the defendant's unauthorized use of the plaintiff's identity; the appropriation of the plaintiff's name, voice, likeness, signature, or photograph to the defendant's advantage, commercially or otherwise; and resulting injury." (*Ross v. Roberts* (2013) 222 Cal.App.4th 677, 684−685 [166 Cal.Rptr.3d 359].)

- "[B]oth the statutory and common law versions of a right of publicity claim require that the defendant actually use the plaintiff's likeness … ." (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 210 [222 Cal.Rptr.3d 250].)

- "California common law has generally followed Prosser's classification of privacy interests as embodied in the Restatement." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24 [26 Cal.Rptr.2d 834, 865 P.2d 633], internal citation omitted.)

- "Consent to the use of a name or likeness is determined by traditional principles of contract

interpretation." (*Local TV, LLC v. Superior Court* (2016) 3 Cal.App.5th 1, 8 [206 Cal.Rptr.3d 884].)

- "[T]he plaintiff in an invasion of privacy case must have conducted himself or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant. If voluntary consent is present, a defendant's conduct will rarely be deemed 'highly offensive to a reasonable person' so as to justify tort liability." (*Hill, supra,* 7 Cal.4th at p. 26.)

- "[T]he appearance of an 'endorsement' is not the *sine qua non* of a claim for commercial appropriation." (*Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 419 [198 Cal.Rptr. 342].)

- "[N]o cause of action will lie for the '[p]ublication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.' " (*Montana v. San Jose Mercury News* (1995) 34 Cal.App.4th 790, 793 [40 Cal.Rptr.2d 639], internal citation omitted.)

- "The difficulty in defining the boundaries of the right, as applied in the publication field, is inherent in the necessity of balancing the public interest in the dissemination of news, information and education against the individuals' interest in peace of mind and freedom from emotional disturbances. When words relating to or actual pictures of a person or his name are published, the circumstances may indicate that public interest is predominant. Factors deserving consideration may include the medium of publication, the extent of the use, the public interest served by the publication, and the seriousness of the interference with the person's privacy." (*Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 278–279 [239 P.2d 630].)

- "Even if each of these elements is established, however, the common law right does not provide relief for every publication of a person's name or likeness. The First Amendment requires that the right to be protected from unauthorized publicity 'be balanced against the public interest in the dissemination of news and information consistent with the democratic processes under the constitutional guaranties of freedom of speech and of the press.' " (*Gionfriddo, supra,* 94 Cal.App.4th at pp. 409–410, internal citations and footnote omitted.)

- "Public interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities." (*Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 542 [18 Cal.Rptr.2d 790], internal citation omitted.)

- "[T]he fourth category of invasion of privacy, namely, appropriation, 'has been *complemented* legislatively by Civil Code section 3344, adopted in 1971.' " (*Eastwood, supra,* 149 Cal.App.3d at pp. 416–417.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 784–786

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, §§ 429.35, 429.36 (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.21 (Matthew Bender)

California Civil Practice: Torts § 20:16 (Thomson Reuters)

1804A. ~~Use~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344)

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/***nonbinary pronoun***] [name/voice/signature/photograph/likeness]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] knowingly used [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] [on merchandise/ [or] to advertise or sell [***describe what is being advertised or sold***]];**

2. **That the use did not occur in connection with a news, public affairs, or sports broadcast or account, or with a political campaign;**

3. **That [***name of defendant***] did not have [***name of plaintiff***]'s consent;**

4. **That [***name of defendant***]'s use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] was directly connected to [***name of defendant***]'s commercial purpose;**

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. 1804 April 2008; Revised April 2009, July 2025

Directions for Use

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. This instruction states a statutory claim for misappropriation under Civil Code section 3344. Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the plaintiff's identity at issue in the case.

One's name and likeness are protected under both the common law and under Civil Code section 3344. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, ~~*Appropriation*~~ *Misappropriation of Name, ~~or~~ Likeness, or Identity*, which sets forth the common ~~-~~law cause of action, ~~will normally~~ may be given.

Different standards apply if the use is in connection with a news, public affairs, or sports broadcast or account, or with a political campaign. (See Civ. Code, § 3344(d); *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 421–426 [198 Cal.Rptr. 342].) The plaintiff bears the burden of proving the

nonapplicability of these exceptions. (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 416–417 [114 Cal.Rptr.2d 307].) Element 2 may be omitted if there is no question of fact with regard to this issue. See CACI No. 1804B, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*, for an instruction to use if one of the exceptions of Civil Code section 3344(d) applies.

If plaintiff alleges that the use was not covered by Civil Code section 3344(d) (e.g., not a "news" account) but that even if it were covered it is not protected under the standards of *Eastwood*, then both this instruction and CACI No. 1804B should be given in the alternative. In that case, it should be made clear to the jury that if the plaintiff fails to prove the inapplicability of Civil Code section 3344(d) as set forth in element 2, the claim is still viable if the plaintiff proves all the elements of CACI No. 1804B.

Consider giving an instruction explaining consent. See generally CACI No. 1302, *Consent Explained*.

Note that a plaintiff is entitled to the sum of $750 under Civil Code section 3344(a) even if actual damages are not proven. (See *Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 1008 [72 Cal.Rptr.3d 194] [claim for 14,060 misappropriations of plaintiff's name under section 3344(a) constitutes single cause of action for which statutory damages are $750].)

Sources and Authority

- Liability for Use of Name, Voice, Signature, Photograph, or Likeness. Civil Code section 3344.
- "Photograph" Defined. Civil Code section 3344(b).
- "Civil Code section 3344 provides a statutory cause of action for commercial misappropriation that complements, rather than codifies, the common law misappropriation cause of action." (*Local TV, LLC v. Superior Court* (2016) 3 Cal.App.5th 1, 13 [206 Cal.Rptr.3d 884].)
- "[C]alifornia's appropriation statute is not limited to celebrity plaintiffs." (*KNB Enters v. Matthews* (2000)78 Cal.App.4th 362, 367 [92 Cal.Rptr.2d 713].)
- "There are two vehicles a plaintiff can use to protect this right: a common law cause of action for commercial misappropriation and a section 3344 claim. To prove the common law cause of action, the plaintiff must establish: ' "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." [Citation.]' To prove the statutory remedy, a plaintiff must present evidence of 'all the elements of the common law cause of action' and must also prove 'a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose.' " (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 544 [135 Cal.Rptr.3d 200], internal citations omitted.)
- "The differences between the common law and statutory actions are: (1) Section 3344, subdivision (a) requires a knowing use whereas under case law, mistake and inadvertence are not a defense against commercial appropriation; and (2) Section 3344, subdivision (g) expressly provides that its remedies are cumulative and in addition to any provided for by law." (*Eastwood, supra,* 149 Cal.App.3d at p.

417, fn. 6, internal citation omitted.)

- "[B]oth the statutory and common law versions of a right of publicity claim require that the defendant actually use the plaintiff's likeness … ." (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 210 [222 Cal.Rptr.3d 250].)

- "Plaintiffs assert that Civil Code section 3344's 'commercial use' requirement does not need to 'involve some form of advertising or endorsement.' This is simply incorrect, as Civil Code section 3344, subdivision (a) explicitly provides for possible liability on '[a]ny person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner … for purposes of advertising … without such person's prior consent.' The statute requires some 'use' by the advertiser aimed at obtaining a commercial advantage for the advertiser." (*Cross, supra,* 14 Cal.App.5th at p. 210.)

- "[T]he single-publication rule as codified in [Civil Code] section 3425.3 applies, in general, to a cause of action for unauthorized commercial use of likeness." (*Christoff v. Nestle USA, Inc.* (2009) 47 Cal.4th 468, 476 [97 Cal.Rptr.3d 798, 213 P.3d 132].)

- "Any facts which tend to disprove one of the allegations raised in a complaint may be offered in the defendant's answer based upon a general denial and need not be raised by affirmative defense. ... Throughout this litigation plaintiffs have borne the burden of establishing that their names and likenesses were used in violation of section 3344, and this burden has always required proof that the disputed uses fell outside the exemptions granted by subdivision (d)." (*Gionfriddo, supra,* 94 Cal.App.4th at pp. 416–417, internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 789–791

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, *Invasion Of Privacy*, ¶¶ 5:1116–5:1118 (The Rutter Group)

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, §§ 429.35–429.36 (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, §§ 184.22–184.24 (Matthew Bender)

California Civil Practice: Torts § 20:17 (Thomson Reuters)

1804B. ~~Use~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Civ. Code, § 3344(d))

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/***nonbinary pronoun***] [name/voice/signature/photograph/likeness] in connection with a [[news/public affairs/sports] broadcast or account/political campaign]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] knowingly used [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] [on merchandise/ [or] to advertise or sell [***describe what is being advertised or sold***]];**

2. **That the use occurred in connection with a [[news/public affairs/sports] broadcast or account/political campaign];**

3. **That the use contained false information;**

4. **[***Use for public figure***: That [***name of defendant***] knew the [broadcast or account/campaign material] was false or that [he/she/***nonbinary pronoun***/it] acted with reckless disregard of its falsity;]**

   [*or***]**

   [*Use for private individual***: That [***name of defendant***] was negligent in determining the truth of the [broadcast or account/campaign material];]**

5. **That [***name of defendant***]'s use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] was directly connected to [***name of defendant***]'s commercial purpose;**

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

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

Derived from former CACI No. 1804 April 2008; Revised April 2009, July 2025

Directions for Use

Give this instruction if the plaintiff's name, voice, signature, photograph, or likeness has been used in connection with a news, public affairs, or sports broadcast or account, or with a political campaign. In this situation, consent is not required. (Civ. Code, § 3344(d).) However, in *Eastwood v. Superior Court*,

the court held that the constitutional standards under defamation law apply under section 3344(d) and that the statute as it applies to news does not provide protection for a knowing or reckless falsehood. (*Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 421–426 [198 Cal.Rptr. 342].) Under defamation law, this standard applies only to public figures, and private individuals may sue for negligent publication of defamatory falsehoods. ~~(*Id.* at p. 424.)~~ Presumably, the same distinction between public figures and private individuals would apply under Civil Code section 3344(d). Element 4 provides for the standards established and suggested by *Eastwood*.

Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the plaintiff's identity at issue in the case.

Give CACI No. 1804A, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness*, if there is no issue whether one of the exceptions of Civil Code section 3344(d) applies. If plaintiff alleges that the use was not covered by subdivision (d) (e.g., not a "news" account) but that even if it were covered it is not protected under the standards of *Eastwood*, then both this instruction and CACI No. 1804A should be given in the alternative. In that case, it should be made clear to the jury that if the plaintiff fails to prove the inapplicability of Civil Code section 3344(d) as set forth element 2 of CACI No. 1804A, the claim is still viable if the plaintiff proves all the elements of this instruction.

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. One's name and likeness are protected under both the common law and under Civil Code section 3344. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, ~~*Appropriation*~~ *Misappropriation of Name,* ~~*or*~~ *Likeness, or Identity*, which sets forth the common ~~-~~law cause of action, ~~will normally~~ may be given.

Note that a plaintiff is entitled to the sum of $750 under Civil Code section 3344(a) even if actual damages are not proven. (See *Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 1008 [72 Cal.Rptr.3d 194] [claim for 14,060 misappropriations of plaintiff's name under section 3344(a) constitutes single cause of action for which statutory damages are $750].)

Even though consent is not required, it may be an affirmative defense. CACI No. 1721, *Affirmative Defense—Consent* (to defamation), may be used in this situation.

Sources and Authority

- Liability for Use of Name, Voice, Signature, Photograph, or Likeness. Civil Code section 3344.
- ~~Civil Code section 3344 is~~ "In 1971, California enacted [Civil Code] section 3344, a commercial appropriation statute which complements the common law tort of appropriation." (*KNB Enters. v. Matthews* (2000) 78 Cal.App.4th 362, 366–367 [92 Cal.Rptr.2d 713].)
- "[C]alifornia's appropriation statute is not limited to celebrity plaintiffs." (*KNB Enters., supra,* 78 Cal.App.4th at p. 367.)

- "There are two vehicles a plaintiff can use to protect this right: a common law cause of action for commercial misappropriation and a section 3344 claim. To prove the common law cause of action, the plaintiff must establish: ' "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." [Citation.]' To prove the statutory remedy, a plaintiff must present evidence of 'all the elements of the common law cause of action' and must also prove 'a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose.' " (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 544 [135 Cal.Rptr.3d 200], internal citations omitted.)

- "The differences between the common law and statutory actions are: (1) Section 3344, subdivision (a) requires a knowing use whereas under case law, mistake and inadvertence are not a defense against commercial appropriation; and (2) Section 3344, subdivision (g) expressly provides that its remedies are cumulative and in addition to any provided for by law." (*Eastwood, supra,* 149 Cal.App.3d at p. 417, fn. 6, internal citation omitted.)

- "The spacious interest in an unfettered press is not without limitation. This privilege is subject to the qualification that it shall not be so exercised as to abuse the rights of individuals. Hence, in defamation cases, the concern is with defamatory lies masquerading as truth. Similarly, in privacy cases, the concern is with nondefamatory lies masquerading as truth. Accordingly, we do not believe that the Legislature intended to provide an exemption from liability for a knowing or reckless falsehood under the canopy of 'news.' We therefore hold that Civil Code section 3344, subdivision (d), as it pertains to news, does not provide an exemption for a knowing or reckless falsehood." (*Eastwood, supra,* 149 Cal.App.3d at p. 426, internal citations omitted.)

- The burden of proof as to knowing or reckless falsehood under Civil Code section 3344(d) is on the plaintiff. (See *Eastwood, supra,* 149 Cal.App.3d at p. 426.)

- "[T]he single-publication rule as codified in [Civil Code] section 3425.3 applies, in general, to a cause of action for unauthorized commercial use of likeness." (*Christoff v. Nestle USA, Inc.* (2009) 47 Cal.4th 468, 476 [97 Cal.Rptr.3d 798, 213 P.3d 132].)

- "Any facts which tend to disprove one of the allegations raised in a complaint may be offered in the defendant's answer based upon a general denial and need not be raised by affirmative defense. ... Throughout this litigation plaintiffs have borne the burden of establishing that their names and likenesses were used in violation of section 3344, and this burden has always required proof that the disputed uses fell outside the exemptions granted by subdivision (d)." (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 416-417 [114 Cal.Rptr.2d 307], internal citation omitted.)

- "We presume that the Legislature intended that the category of public affairs would include things that would not necessarily be considered news. Otherwise, the appearance of one of those terms in the subsection would be superfluous, a reading we are not entitled to give to the statute. We also presume that the term 'public affairs' was intended to mean something less important than news. Public affairs must be related to real-life occurrences." (*Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 546 [18 Cal.Rptr.2d 790], internal citations omitted.)

- "[N]o cause of action will lie for the 'publication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.' " (*Montana v. San Jose Mercury News* (1995) 34 Cal.App.4th 790, 793 [40 Cal.Rptr.2d 639], internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 789–791

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-:L, *Invasion Of Privacy*, ¶¶ 5:1116–5:1118 (The Rutter Group)

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

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

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.35 (Matthew Bender)

California Civil Practice: Torts § 20:17 (Thomson Reuters)

1805. Affirmative Defense to ~~Use or Appropriation~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (*Comedy III*)

[*Name of defendant***] claims that ~~[he/she/*nonbinary pronoun*]~~ has not violated [his/her/*nonbinary pronoun*] use of [***name of plaintiff/other person, e.g., celebrity***]'s ~~right of privacy~~ [name/voice/signature/photograph/likeness/identity] ~~because~~ in the [***insert type of work, e.g., "picture"***] is protected by the First Amendment's guarantee of freedom of speech and expression. To succeed on this defense, [***name of defendant***] must prove either of the following:**

1. **That the [***insert type of work, e.g., "picture"***] adds ~~something new~~ significant creative elements to [***name of plaintiff/other person, e.g., celebrity***]'s ~~likeness~~[name/voice/signature/photograph/likeness/identity], giving it a new expression, meaning, or message; or**

2. **That the value of the [***insert type of work, e.g., "picture"***] does not result primarily from [***name of plaintiff/other person, e.g., celebrity***]'s fame.**

New September 2003; Revised October 2008, July 2025

Directions for Use

This instruction sets forth the affirmative defense under the First Amendment to the unauthorized use of a person's name or likeness. Select the corresponding bracketed terms for the aspect of the person's identity at issue in the case.

~~This instruction assumes that the plaintiff is the celebrity whose likeness is the subject of the trial. This instruction will need to be modified if the plaintiff is not the actual celebrity.~~Use the celebrity's or other person's name rather than the plaintiff's name if the plaintiff is not the person whose name or likeness is the subject of the trial (for example, the plaintiff is an heir to or assignee of the right at issue).

Sources and Authority

- "The right of publicity is often invoked in the context of commercial speech when the appropriation of a celebrity likeness creates a false and misleading impression that the celebrity is endorsing a product. Because the First Amendment does not protect false and misleading commercial speech, and because even nonmisleading commercial speech is generally subject to somewhat lesser First Amendment protection, the right of publicity may often trump the right of advertisers to make use of celebrity figures." (*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 396 [106 Cal.Rptr.2d 126, 133, 21 P.3d 797, 802], internal citations omitted.)

- "[O]ur precedents have held that speech which either appropriates the economic value of a performance or persona or seeks to capitalize off a celebrity's image in commercial advertisements is unprotected by the First Amendment against a California right-of-publicity claim." (*Sarver v. Chartier* (9th Cir. 2016) 813 F.3d 891, 905.)

- "In sum, when an artist is faced with a right of publicity challenge to his or her work, he or she may raise as affirmative defense that the work is protected by the First Amendment inasmuch as it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame." (*Comedy III Productions, Inc.*, *supra,* ~~*v. Gary Saderup, Inc.* (2001)~~ 25 Cal.4th ~~387,~~ at p. 407 ~~[106 Cal.Rptr.2d 126, 21 P.3d 797]~~.)

- "We have explained that '[o]nly if [a defendant] is entitled to the [transformative] defense *as a matter of law* can it prevail on its motion to strike,' because the California Supreme Court 'envisioned the application of the defense as a question of fact.' As a result, [defendant] 'is only entitled to the defense as a matter of law if no trier of fact could reasonably conclude that the [game] [i]s not transformative.' " (*Keller v. Elec. Arts Inc. (In re NCAA Student-Athlete Name & Likeness Licensing Litig.)* (9th Cir. 2013) 724 F.3d 1268, 1274, original italics.)

- "[C]ourts can often resolve the question as a matter of law simply by viewing the work in question and, if necessary, comparing it to an actual likeness of the person or persons portrayed. Because of these circumstances, an action presenting this issue is often properly resolved on summary judgment or, if the complaint includes the work in question, even demurrer." (*Winter v. DC Comics* (2003) 30 Cal.4th 881, 891–892 [134 Cal.Rptr.2d 634, 69 P.3d 473], internal citation omitted.)

- "[T]he First Amendment … safeguards the storytellers and artists who take the raw materials of life—including the stories of real individuals, ordinary or extraordinary—and transform them into art, be it articles, books, movies, or plays." (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 860 [230 Cal.Rptr.3d 625].)

- "Although surprisingly few courts have considered in any depth the means of reconciling the right of publicity and the First Amendment, we follow those that have in concluding that depictions of celebrities amounting to little more than the appropriation of the celebrity's economic value are not protected expression under the First Amendment." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 400.)

- "Furthermore, in determining whether a work is sufficiently transformative, courts may find useful a subsidiary inquiry, particularly in close cases: does the marketability and economic value of the challenged work derive primarily from the fame of the celebrity depicted? If this question is answered in the negative, then there would generally be no actionable right of publicity. When the value of the work comes principally from some source other than the fame of the celebrity—from the creativity, skill, and reputation of the artist—it may be presumed that sufficient transformative elements are present to warrant First Amendment protection. If the question is answered in the affirmative, however, it does not necessarily follow that the work is without First Amendment protection—it may still be a transformative work." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 407.)

- "As the Supreme Court has stated, the central purpose of the inquiry into this fair use factor 'is to see ... whether the new work merely "supersede[s] the objects" of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is "transformative." ' " (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 404, internal citations

omitted.)

- "We emphasize that the transformative elements or creative contributions that require First Amendment protection are not confined to parody and can take many forms, from factual reporting to fictionalized portrayal, from heavy-handed lampooning to subtle social criticism." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 406.)

- "[Defendant] contends the plaintiffs' claims are barred by the transformative use defense formulated by the California Supreme Court in *Comedy III* … . 'The defense is "a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." ' " (*Davis v. Elec. Arts, Inc.* (9th Cir. 2015) 775 F.3d 1172, 1177, internal citation omitted.)

- "Simply stated, the transformative test looks at 'whether the celebrity likeness is one of the "raw materials" from which an original work is synthesized, or whether the depiction or imitation of the celebrity is the very sum and substance of the work in question. We ask, in other words, whether a product containing a celebrity's likeness is so transformed that it has become primarily the defendant's own expression rather than the celebrity's likeness.' This transformative test is the court's primary inquiry when resolving a conflict between the right of publicity and the First Amendment." (*Ross v. Roberts* (2013) 222 Cal.App.4th 677, 686 [166 Cal.Rptr.3d 359], internal citations omitted.)

- "*Comedy III's* 'transformative' test makes sense when applied to products and merchandise—'tangible personal property,' in the Supreme Court's words. Lower courts have struggled mightily, however, to figure out how to apply it to expressive works such as films, plays, and television programs." (*De Havilland, supra,* 21 Cal.App.5th at p. 863, internal citation omitted.)

- "The First Amendment defense does not apply only to visual expressions, however. 'The protections may extend to all forms of expression, including written and spoken words (fact or fiction), music, films, paintings, and entertainment, whether or not sold for a profit.' " (*Ross, supra,* 222 Cal.App.4th at p. 687.)

- "The distinction between parody and other forms of literary expression is irrelevant to the *Comedy III* transformative test. It does not matter what precise literary category the work falls into. What matters is whether the work is transformative, not whether it is parody or satire or caricature or serious social commentary or any other specific form of expression." (*Winter, supra,* 30 Cal.4th at p. 891.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 788

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 4(VII)-C, *Harm to Reputation and Privacy Interests*, ¶ 4:1385 et seq. (The Rutter Group)

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

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.38 (Matthew Bender)

1930. Receiving Stolen Property—Civil Liability—Essential Factual Elements (Pen. Code, § 496(c))

[*Name of plaintiff***] claims damages based on [***name of defendant***]'s [***specify the violation of Penal Code section 496(a) alleged, e.g., receiving stolen property***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] [bought/received/[***specify other conduct***]] property that was [stolen/obtained by extortion];**

2. **That [***name of defendant***] knew the property was [stolen/obtained by extortion] at the time [he/she/***nonbinary pronoun***] [bought/received/[***specify other conduct***]] the property;**

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

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

Property is stolen if it was obtained by theft. Property is obtained by theft if a person takes possession of property owned by someone else, without the owner's consent, and with the intent either to permanently deprive the owner of that property or to deprive the owner of a major portion of the value or enjoyment of the property for an extended period of time.

[*or*]

Property is obtained by extortion if: (1) the property was obtained from another person with that person's consent, and (2) that person's consent was obtained through the use of force or fear.

[To receive property means to take possession and control of it. Mere presence near or access to the property is not enough.] [Two or more people can possess the property at the same time.] [A person does not have to actually hold or touch something to possess it. It is enough if the person has [control over it] [or] [the right to control it], either personally or through another person.]

New July 2025

Directions for Use

This instruction is intended for use when the plaintiff seeks remedies under Penal Code section 496(c) for a violation of section 496(a). A different instruction will be required if the plaintiff's claim is based on a violation of section 496(b).

For elements 1 and 2, select the conduct that is appropriate for the case. Other conduct that may establish receiving stolen property includes, for example, withholding or concealing property from its owner or aiding another to do so. (Pen. Code, § 496(a).)

Either the paragraph defining "stolen" or the paragraph defining "obtained by extortion" must be given depending on the method of obtaining the property at issue. Other definitions of theft may also be given (for example, theft by larceny, theft by false pretenses, theft by trick, or theft by embezzlement). See Judicial Council of California Criminal Jury Instructions (CALCRIM) No. 1800, *Theft by Larceny*, No. 1804, *Theft by False Pretense*, No. 1805, *Theft by Trick*, and No. 1806, *Theft by Embezzlement*. See generally CALCRIM No. 1750, *Receipt of Stolen Property*.

The instruction will need to be modified if the defendant is an alleged principal in the alleged theft or extortion of the property or if the defendant was convicted under Penal Code section 496(a) in connection with the property at issue in the case.

Innocent intent or mistake of fact may be a defense. See CALCRIM No. 1751, *Defense to Receiving Stolen Property: Innocent Intent*; *People v. Speck* (2022) 74 Cal.App.5th 784, 787 [289 Cal.Rptr.3d 816] [holding the trial court prejudicially erred in denying defendant's request to instruct the jury on mistake of fact, citing CALCRIM No. 3406, *Mistake of Fact*]. A good faith belief that one is authorized to take the property in question may also be a defense to liability. See CALCRIM No. 1863, *Defense to Theft or Robbery: Claim of Right*.

Sources and Authority

- Civil Action for Receiving or Concealing Stolen Property, Treble Damages, and Attorney Fees. Penal Code section 496(c).

- Elements of Receiving or Concealing Stolen Property. Penal Code section 496(a).

- "Theft" Defined. Penal Code sections 484, 490a.

- "Extortion" Defined. Penal Code section 518.

- "Penal Code section 496 does not state a criminal conviction under section 496(a) is required for a private plaintiff to recover treble damages under section 496(c). Nor does section 496(c) limit recovery of treble damages to a crime victim. Instead, section 496(c) permits '[a]ny person' who 'has been injured by a violation of subdivision (a) or (b)' to 'bring an action' to recover treble damages." (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1045 [151 Cal.Rptr.3d 546].)

- "Although section 496 defines a criminal offense, it also provides an enhanced civil remedy in the event there has been a violation of the statute—that is, where a person has knowingly received, withheld or sold property that has been stolen or that has been obtained in any manner constituting theft. The enhanced civil remedy authorized by the statute is that any party injured by the violation of section 496 may file an action for 'three times the amount of actual damages' sustained, and for costs of suit and reasonable attorney fees." (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 119 [247 Cal.Rptr.3d 114].)

- "[T]he Penal Code provides that persons are guilty of theft if they (1) 'feloniously steal … [or] take … the personal property of another' or (2) 'fraudulently appropriate property which has been entrusted to [them].' The first of these definitions describes theft by larceny. … Importantly,

larceny requires an 'intent to steal'—in other words, 'the intent, without a good faith claim of right, to permanently deprive the owner of possession.' A jury instruction defining theft by larceny without the requisite specific intent is erroneous as a matter of law. … By leaving out any description of the defendant's mental state, the modification effectively turned theft into a strict liability offense.' " (*Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, 504 [316 Cal.Rptr.3d 792], internal citations omitted.)

- "For property to be 'stolen' or obtained by 'theft,' it must be taken with a specific intent. 'California courts have long held that theft by larceny requires the intent to *permanently* deprive the owner of possession of the property.' An intent to *temporarily* deprive the owner of possession may suffice when the defendant intends 'to take the property for so extended a period as to deprive the owner of a major portion of its value or enjoyment … .' " (*People v. MacArthur* (2006) 142 Cal.App.4th 275, 280 [47 Cal.Rptr.3d 736], internal citation omitted, original italics.)

- "Although we are not asked here to determine whether plaintiff would have been able to prove theft, we observe that not all commercial or consumer disputes alleging that a defendant obtained money or property through fraud, misrepresentation, or breach of a contractual promise will amount to a theft. To prove theft, a plaintiff must establish criminal intent on the part of the defendant beyond 'mere proof of nonperformance or actual falsity.' " (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361–362 [296 Cal.Rptr.3d 1, 513 P.3d 166] internal citation omitted.)

- "[W]hen the Legislature enacted section 496(c), it presumably understood that the phrase 'a violation of subdivision (a)' would include theft by false pretense." (*Bell, supra,* 212 Cal.App.4th at p. 1048.)

- "We also find that section 496(c) applies concerning the conduct at issue in the present case. The unambiguous relevant language covers fraudulent diversion of partnership funds. Defendants' conduct falls within the ambit of section 496(a): They 'receive[d]' 'property' (the diverted partnership funds) belonging to plaintiff, having 'obtained' the diverted funds 'in [a] manner constituting theft.' Defendants also 'conceal[ed]' or 'withh[e]ld[]' those funds (and/or aided in concealing or withholding them) from plaintiff. They did all of this 'knowing' the diverted funds were 'so … obtained.' " (*Siry Investment, L.P., supra,* 13 Cal.5th at p. 361, internal citations omitted.)

- "[A] jury reasonably could have found on this record that [defendant] also did not obtain the information in *any other* relevant manner constituting theft. Embezzlement, 'a form of larceny,' similarly requires an intent to deprive an owner of his or her property. A good faith belief that one is authorized to take the property in question is a defense to liability. For the reasons provided above, a reasonable jury could have found [defendant] lacked the requisite intent and believed in good faith he was authorized to take and retain the information in question." (*Garrabrants, supra,* 98 Cal.App.5th at p. 506, original italics, internal citations omitted.)

VF-1930. Receiving Stolen Property—Civil Liability

We answer the questions submitted to us as follows:

1. **Did [***name of defendant***] [buy/receive/[***specify other conduct***]] property that was [stolen/obtained by extortion]?**
   ____ Yes ____ No

   If your answer to question 1 is yes, then 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 the property was [stolen/obtained by extortion] at the time [he/she/***nonbinary pronoun***] [bought/received/[***specify other conduct***]] 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 plaintiff***] harmed?**
   ____ 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?**

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

New July 2025

Directions for Use

This verdict form is based on CACI No. 1930, *Receiving Stolen Property—Civil Liability*.

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

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances. If the jury finds the defendant liable for actual damages, Penal Code section 496 authorizes an award of three times the amount of actual damages sustained by the plaintiff, costs of suit, and reasonable attorney's fees. (Pen. Code, § 496(c).)

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

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

3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)

[*Name of plaintiff*] claims that [*name of defendant*] intentionally interfered with [or attempted to interfere with] [his/her/*nonbinary pronoun*] civil rights by threat~~s~~, intimidation, or coercion. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. [That by threat, intimidation, or coercion, [*name of defendant*] interfered [or attempted to interfere] with [*name of plaintiff*]'s exercise or enjoyment of [his/her/*nonbinary pronoun*] right [*e.g., to be free from arrest without probable cause*];]

[*or*]

1. [That by threat~~s~~, intimidation or coercion, [*name of defendant*] caused [*name of plaintiff*] to reasonably believe that if [he/she/*nonbinary pronoun*] exercised [his/her/*nonbinary pronoun*] right [*insert right, e.g., ~~"~~to vote~~"~~*], [*name of defendant*] would commit violence against [[him/her/*nonbinary pronoun*]/ [or] [his/her/*nonbinary pronoun*] property] and that [*name of defendant*] had the apparent ability to carry out the threats;]

[*or*]

1. [That [*name of defendant*] acted violently against [[*name of plaintiff*]/ [and] [*name of plaintiff*]'s property] [to prevent [him/her/*nonbinary pronoun*] from exercising [his/her/*nonbinary pronoun*] right [*e.g., to vote*]/to retaliate against [*name of plaintiff*] for having exercised [his/her/*nonbinary pronoun*] right [*e.g., to vote*]];]

[2. That [*name of defendant*] [intended to deprive [*name of plaintiff*] of ~~[his/her/*nonbinary pronoun*]~~/acted with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*name of plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*];]

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

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

New September 2003; Renumbered from CACI No. 3025 and Revised December 2012, November 2018, May 2024, July 2025*

Directions for Use

Select the ~~first~~ second option for element 1 if the defendant's conduct involved threats of violence based on speech alone. (See Civ. Code, § 52.1(k).) Select the ~~second~~ third option if the conduct involved actual violence. An introductory instruction defining the particular law or constitutional right at issue may be given.

The Bane Act provides that speech alone is not sufficient to constitute a violation unless it involves a credible threat of violence. (Civ. Code, § 52.1(k).) This limitation would appear to foreclose a claim based on threats, intimidation, or coercion involving a nonviolent consequence. (See *Cabesuela v. Browning-Ferris Industries* (1998) 68 Cal.App.4th 101, 111 [80 Cal.Rptr.2d 60] [to state a cause of action under Bane Act there must first be violence or intimidation by threat of violence].) ~~No case has been found, however, that applies the speech limitation to foreclose a claim based on coercion without violence or a threat of violence, and several courts have suggested that this point is not fully settled. (See *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 959 [137 Cal.Rptr.3d 839] [we "need not decide that every plaintiff must allege violence or threats of violence in order to maintain an action under section 52.1"]; *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 408 [39 Cal.Rptr.3d 1] [also noting issue but finding it unnecessary to address].) To assert such a claim, modify element 1, option 1 to allege coercion based on a nonviolent threat with severe consequences.~~

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of $4,000 for violations of Civil Code sections 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~~ subdivision of ~~S~~section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the reference to section 52 in ~~subsection~~ subdivision (b) of the Bane Act would seem to indicate that damages may be recovered under both ~~subsections~~ subdivisions (a) and (b) of section 52.

Under the Unruh Act, if only the statutory minimum damages of $4,000 is sought, it is not necessary to prove harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Section 52 provides for minimum statutory damages for every violation of section 51, regardless of the plaintiff's actual damages]; see also Civ. Code, § 52(h) ["actual damages" means special and general damages].) Presumably, the same rule applies under the Bane Act as the statutory minimum of section 52(a) should be recoverable. Therefore, omit elements 2 and 3 unless actual damages are sought. If actual damages are sought, combine CACI No. 3067, *Unruh Civil Rights Act—Damages,* and CACI No. 3068, *Ralph Act—Damages and Penalty*, to recover damages under both ~~subsections~~ subdivisions (a) and (b) of section 52.

It has been the rule that in a wrongful detention case, the coercion required to support a Bane Act claim must be coercion independent from that inherent in the wrongful detention itself. (See *Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 981 [159 Cal.Rptr.3d 204].) One court, however, did not apply this rule in a wrongful arrest case. The court instead held that the "threat, intimidation or coercion" element requires a defendant to act with specific intent to violate protected rights, i.e., to act in reckless disregard of constitutional or statutory prohibitions or guarantees. (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 790–804 [225 Cal.Rptr.3d 356].) Element 2 expresses this requirement.

Sources and Authority

- Bane Act. Civil Code section 52.1.
- Remedies Under Bane Act. Civil Code section 52.
- "The Bane Act permits an individual to pursue a civil action for damages where another person

'interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.' 'The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threat[], intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.' " (*King v. State of California* (2015) 242 Cal.App.4th 265, 294 [195 Cal.Rptr.3d 286], internal citation omitted.)

- "[S]ection 52.1, was enacted a decade [after the Ralph Act] as part of Assembly Bill No. 63 (1987–1988 Reg. Sess.) (Assembly Bill No. 63) and is known as the Tom Bane Civil Rights Act. It was intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence. The stated purpose of the bill was 'to fill in the gaps left by the Ralph Act' by allowing an individual to seek relief to prevent the violence from occurring before it was committed and providing for the filing of criminal charges." (*Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1447 [39 Cal.Rptr.3d 706], internal citation omitted.)

- "The Legislature enacted section 52.1 to stem a tide of hate crimes." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 338 [70 Cal.Rptr.2d 844, 949 P.2d 941], internal citation omitted.)

- "[T]o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence. Second, the violence or threatened violence must be due to plaintiff's membership in one of the specified classifications set forth in Civil Code section 51.7 or a group similarly protected by constitution or statute from hate crimes." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1290 [217 Cal.Rptr.3d 275].)

- "The plaintiff must show 'the defendant interfered with or attempted to interfere with the plaintiff's legal right by threatening or committing violent acts.' " (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395 [218 Cal.Rptr.3d 38].)

- "However, the statutory language does not limit its application to hate crimes. Notably, the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff's membership in a protected class of persons." (*Shoyoye~~, supra, 203 Cal.App.4th at p. 956~~ v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 956 [137 Cal.Rptr.3d 839].)

- "The phrase 'under color of law' indicates, without doubt, that the Legislature intended to include law enforcement officers within the scope of Section 52.1 if the requisites of the statute are otherwise met." (*Cornell, supra,* 17 Cal.App.5th at p. 800.)

- "Civil Code section 52.1, the Bane Act civil counterpart of [Penal Code] section 422.6, recognizes a private right of action for damages and injunctive relief for interference with civil rights." (*In re M.S.* (1995) 10 Cal.4th 698, 715 [42 Cal.Rptr.2d 355, 896 P.2d 1365].)

- "[T]he Bane Act requires that the challenged conduct be intentional." (*Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125 [212 Cal.Rptr.3d 884].)

- "[S]ection 52.1 does require an attempted or completed act of interference with a legal right, accompanied by a form of coercion." (*Jones, supra,* 17 Cal.4th at p. 334.)

- "The statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." (*Shoyoye, supra,* 203 Cal.App.4th at p. 958.)

- " '[W]here coercion is inherent in the constitutional violation alleged, … the statutory requirement of "threats, intimidation, or coercion" is not met. The statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself.' " (*Simmons, supra,* 7 Cal.App.5th at p. 1126.)

- "The Legislature's purpose suggests to us that the coercive nature of a tax—however exorbitant or unfair that tax may be—was not what the Legislature had in mind when it forbade interference with legal rights by 'threat, intimidation, or coercion.' Plaintiffs have cited no case where economic or monetary pressures alone have been found to constitute coercion under the Bane Act." (*County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354, 371 [262 Cal.Rptr.3d 1].)

- "It is the intent of the Legislature in enacting this act to clarify that an action brought pursuant to Section 52.1 of the Civil Code does not require the individual whose rights are secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of California, to be a member of a protected class identified by its race, color, religion, or sex, among other things." (Assembly Bill 2719 (Stats. 2000, ch. 98) [abrogating the holding of *Boccato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 [35 Cal.Rptr.2d 282]].)

- "Subdivision (j) of Civil Code section 52.1 provides that speech alone is insufficient to support such an action, except upon a showing that the speech itself threatens violence against a specific person or group of persons, the person or group of persons against whom the speech is directed 'reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence has the apparent ability to carry out the threat.' ... The presence of the express 'reasonable fear' element, in addition to the 'apparent ability' element, in Civil Code section 52.1, governing civil actions for damages, most likely reflects the Legislature's determination [that] a defendant's civil liability should depend on the harm actually suffered by the victim." (*In re M.S., supra,* 10 Cal.4th at p. 715, internal citation omitted.)

- "[Q]ualified immunity of the kind applied to actions brought under section 1983 does not apply to actions brought under Civil Code section 52.1." (*Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th 1230, 1246 [63 Cal.Rptr.3d 741].)

- "[A] wrongful detention that is 'accompanied by the requisite threats, intimidation, or coercion'—'coercion independent from the coercion inherent in the wrongful detention itself' that is 'deliberate or spiteful'—is a violation of the Bane Act." (*Bender, supra,* 217 Cal.App.4th at p. 981, internal citations omitted.)

- "Here, there clearly *was* a showing of coercion separate and apart from the coercion inherent in an unlawful arrest. [Defendant officer] wrongfully detained and arrested plaintiff, because he had no

probable cause to believe plaintiff had committed any crime. But, in addition, [defendant officer] deliberately and unnecessarily beat and pepper sprayed the unresisting, already handcuffed plaintiff. That conduct was not the coercion that is inherent in a wrongful arrest." (*Bender, supra,* 217 Cal.App.4th at p. 979, original italics.)

- "We acknowledge that some courts have read *Shoyoye* as having announced 'independen[ce] from [inherent coercion]' as a requisite element of all Section 52.1 claims alleging search-and-seizure violations, but we think those courts misread the statute as well as the import of *Venegas*. By its plain terms, Section 52.1 proscribes any 'interfere[nce] with' or attempted 'interfere[nce] with' protected rights carried out 'by threat, intimidation or coercion.' Nothing in the text of the statute requires that the offending 'threat, intimidation or coercion' be 'independent' from the constitutional violation alleged." (*Cornell, supra,* 17 Cal.App.5th at pp. 799–800.)

- "The Bane Act does not require that 'the offending "threat, intimidation or coercion" be "independent" from the constitutional violation alleged.' Rather, where an unlawful arrest is properly pleaded and proved, 'the egregiousness required by [Civ. Code] [s]ection 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee's right to freedom from unreasonable seizure, not by whether the evidence shows something beyond the coercion "inherent" in the wrongful detention.' " (*Murchison v. County of Tehama* (2021) 69 Cal.App.5th 867, 896 [284 Cal.Rptr.3d 742], internal citation omitted.)

- "[W]here, as here, an unlawful arrest is properly pleaded and proved, the egregiousness required by Section 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee's right to freedom from unreasonable seizure, not by whether the evidence shows something beyond the coercion 'inherent' in the wrongful detention." (*Cornell, supra,* 17 Cal.App.5th at pp. 801–802.)

- "[T]his test ' "essentially sets forth two requirements for a finding of 'specific intent' … . The first is a purely legal determination. Is the … right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that … right? If both requirements are met, even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted [with the requisite specific intent]—i.e., 'in reckless disregard of constitutional [or statutory] prohibitions or guarantees.' " ' " (*Cornell, supra,* 17 Cal.App.5th at p. 803.)

- "Civil Code section 52.1 does not address the immunity established by section 844.6 [public entity immunity for injury to prisoners]. Nothing in Civil Code section 52.1 indicates an intent to abrogate this specific immunity provision. The immunity that it creates therefore applies to [plaintiff]'s Bane Act claim." (*Towery v. State of California* (2017) 14 Cal.App.5th 226, 234 [221 Cal.Rptr.3d 692].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 989 et seq.

Cheng et al., Cal. Fair Housing and Public Accommodations § 14:5 (The Rutter Group)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

2 Wilcox, California Employment Law, Ch. 40, *Overview of Equal Employment Opportunity Laws*, § 40.12[2] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 117A, *Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion, or Violence*, § 117A.11 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, §§ 35.01, 35.20 et seq. (Matthew Bender)

VF-3035. Bane Act (Civ. Code, § 52.1)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] interfere [or attempt to interfere] with [*name of plaintiff*]'s exercise or enjoyment of [his/her/*nonbinary pronoun*] right [*e.g., to be free from arrest without probable cause*]?
Yes No

[*or*]

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*] [intend to deprive [*name of plaintiff*] of/act with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*name of plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*]?
Yes No

[*or*]

2. Did [*name of defendant*]'s threats cause [*name of plaintiff*] to reasonably believe that if [he/she/*nonbinary pronoun*] exercised [his/her/*nonbinary pronoun*] right [*insert right, e.g., "to vote"*] [*name of defendant*] would commit violence against [[him/her/*nonbinary pronoun*]/ [or] [his/her/*nonbinary pronoun*] property] and that [*name of defendant*] had the apparent ability to carry out the threat?
____ Yes ____ No

[*or*]

2. Did [*name of defendant*] commit these acts of violence to [prevent [*name of plaintiff*] from exercising [his/her/*nonbinary pronoun*] right [*insert right, e.g., "to vote"*]/retaliate against [*name of plaintiff*] for having exercised [his/her/*nonbinary pronoun*] right [*insert right*]]?
____ Yes ____ No

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

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

____ Yes ____ No

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

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

[a. Past economic loss

[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other past economic loss $ _____]
Total Past Economic Damages: $ _____]

[b. Future economic loss

[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other future economic loss $ _____]
Total Future Economic Damages: $ _____]

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

$ _____]

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

$ _____]

TOTAL $ _____

[Answer question 5.

5. What amount do you award as punitive damages?

$ _____]

Signed: _____
Presiding Juror

Dated: _____

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

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3015 and Revised December 2012, December 2016, May 2024, July 2025

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~~ second option for ~~elements~~ questions 1 and 2 if the defendant has threatened violence. Give the ~~second~~ third 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 sections 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~~ subdivision of ~~S~~section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the Bane Act refers to section 52. (See Civ. Code, § 52.1(c).) This reference would seem to indicate that damages may be recovered under both ~~subsections~~ subdivisions (a) and (b) of section 52. The court should compute the damages under section 52(a) by multiplying actual damages by three, and awarding $4,000 if the amount is less. Questions 5 addresses punitive damages under section 52(b).

If no actual damages are sought, the $4,000 statutory minimum damages may be awarded without proof of harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) In this case, only questions 1 and 2 need be answered.

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

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

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

3704. Existence of "Employee" Status Disputed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Directions for Use

This instruction is based on *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399] and the Restatement Second of Agency, section 220. It is sometimes referred to as the *Borello* test or the common law test. (See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 934 [232 Cal.Rprt.3d 1, 416 P.3d 1].) It is intended to address the employer-employee relationship for purposes of assessing vicarious responsibility on the employer for the employee's acts. Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

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

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

~~A different test for the existence of "independent contractor" status applies to app-based rideshare and delivery drivers. (See Bus. & Prof. Code, § 7451.)~~

Sources and Authority

- Principal-Agent Relationship. Civil Code section 2295.
- Rebuttable Presumption that Contractor Is Employee Rather Than Independent Contractor; Proof of Independent Contractor Status. Labor Code section 2750.5.
- "[S]ubject to certain policy considerations, a hirer … cannot be held vicariously liable for the negligence of his independent contractors." (*Blackwell v. Vasilas* (2016) 244 Cal.App.4th 160, 168 [197 Cal.Rptr.3d 753].)
- "Whether a common law employer-employee relationship exists turns foremost on the degree of a

hirer's right to control how the end result is achieved." (*Ayala, supra,* 59 Cal.4th at p. 528.)

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

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

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

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

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

- "[A]t common law the problem of determining whether a worker should be classified as an employee or an independent contractor initially arose in the tort context--in deciding whether the hirer of the worker should be held vicariously liable for an injury that resulted from the worker's actions. In the vicarious liability context, the hirer's right to supervise and control the details of the worker's actions was reasonably viewed as crucial, because ' "[t]he extent to which the employer had a right to control [the details of the service] activities was . . . highly relevant to the question whether the employer

ought to be legally liable for them . . . .” ’ For this reason, the question whether the hirer controlled the details of the worker’s activities became the primary common law standard for determining whether a worker was considered to be an employee or an independent contractor.” (*Dynamex, supra,* 4 Cal.5th at p. 927, internal citations omitted.)

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

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

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

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

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

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

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

- “Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because ‘[t]he power of the principal to terminate the services of the agent gives him

the means of controlling the agent's activities.' " (*Ayala, supra,* 59 Cal.4th at p. 531.)

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

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

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

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

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

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

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

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

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

- Restatement Second of Agency, section 220, provides: "(1) A servant is a person employed to

> perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control. [¶] (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered: [¶] (a) the extent of control which, by the agreement, the master may exercise over the details of the work; [¶] (b) whether or not the one employed is engaged in a distinct occupation or business; [¶] (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; [¶] (d) the skill required in the particular occupation; [¶] (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; [¶] (f) the length of time for which the person is employed; [¶] (g) the method of payment, whether by the time or by the job; [¶] (h) whether or not the work is a part of the regular business of the employer; [¶] (i) whether or not the parties believe they are creating the relation of master and servant; and [¶] (j) whether the principal is or is not in business."

Secondary Sources

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

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

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

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

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

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

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

3713. Nondelegable Duty

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

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

1. **That [***name of defendant***] hired [***name of third party***] to [***describe job involving nondelegable duty, e.g., assemble a product***];**

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

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

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

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*New October 2004; Revised June 2010, November 2024, July 2025**

Directions for Use

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

This instruction should generally not be given in a case brought against the hirer by an injured independent contractor or contractor's employee that is governed by the *Privette* doctrine, which establishes "the basic rule that a hirer is typically not liable for injuries sustained by an independent contractor or its workers while on the job" because "the hirer presumptively delegates to the independent contractor the authority to determine the manner in which the work is to be performed." (*Acosta v. MAS Realty, LLC* (2023) 96 Cal.App.5th 635, 650 [314 Cal.Rptr.3d 507, 519]; see *Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 48 [282 Cal.Rptr.3d 658, 493 P.3d 212] ["even where an unsafe condition exists on the premises due to the landowner's failure to comply with specific statutory and regulatory duties, the landowner is not liable because it is the contractor who is responsible for its own workers' safety"].)

Sources and Authority

- "As a general rule, a hirer of an independent contractor is not liable for physical harm caused to others by the act or omission of the independent contractor. There are multiple exceptions to the rule,

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

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

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

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

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

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

Cal.Rptr.2d 158].)

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

- " '[A] nondelegable duty operates, not as a substitute for liability based on negligence, but to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm and who may therefore properly be held liable for the negligence of his agent, whether his agent was an employee or independent contractor.' A California public agency is subject to the imposition of the duty in the same manner as any private individual." (*Jordy v. County of Humboldt* (1992) 11 Cal.App.4th 735, 742 [14 Cal.Rptr.2d 553], citing Gov. Code, § 815.4, internal citations omitted.)

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

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

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

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

Secondary Sources

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

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

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

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

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

4013. Disqualification From Voting

If you find that [*name of respondent***]~~, as a result of [a mental disorder/impairment by chronic alcoholism],~~ is gravely disabled, then you must also decide whether [he/she/***nonbinary pronoun***] should also be disqualified from voting. To disqualify [***name of respondent***] from voting, all 12 jurors must find, by clear and convincing evidence, that [he/she/***nonbinary pronoun***] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.**

New June 2005; Revised June 2016, July 2025

Directions for Use

~~T~~Give this instruction with CACI No. 4000, *Conservatorship—Essential Factual Elements*, in proceedings subject to Elections Code section 2208(b) ~~should be given~~ if the petition prays for this relief.

~~In addition to the required jury finding, one of the following must apply (See Elec. Code, § 2208(a)):~~

~~(1) A conservator for the person or the person and estate is appointed under Division 4 (commencing with Section 1400) of the Probate Code.~~

~~(2) A conservator for the person or the person and estate is appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.~~

~~(3) A conservator is appointed for the person under proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.~~

~~(4) A person has pleaded not guilty by reason of insanity, has been found to be not guilty under Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.~~

~~The court should determine if one of the above requirements has been met.~~

Sources and Authority

- Disqualification from Voting. Elections Code section 2208.
- Affidavit of Voter Registration. Elections Code section 2150.

Secondary Sources

2 California Conservatorship Practice (Cont.Ed.Bar) § 11.34

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4306. Termination of Month-to-Month Tenancy—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 the tenancy has ended. 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***] under a month-to-month [lease/rental agreement/sublease];**

3. **That [***name of plaintiff***] gave [***name of defendant***] proper [30/60] days' written notice that the tenancy was ending; and**

4. **That [***name of defendant***] [or subtenant [***name of subtenant***]] is still occupying the property.**

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*New August 2007; Revised June 2011, December 2011, May 2020, July 2025**

Directions for Use

Include the bracketed references to a subtenancy in the opening paragraph and in element 4 if persons other than the tenant-defendant are in occupancy of the premises.

If the plaintiff is the landlord or owner, select "owns" in element 1 and "rented" and either "lease" or "rental agreement" 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 "leases" in element 1 and "subleased" and "sublease" in element 2. (Code Civ. Proc., § 1161(3).)

In element 3, select the applicable number of days' notice required by statute. Thirty days is sufficient for commercial tenancies, residential tenancies of less than a year~~'s duration~~, commercial tenancies by qualified commercial tenants of less than a year, and certain transfers of the ownership interest to a bona fide purchaser. For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more~~'s duration~~, 60 days' notice is generally required. (Civ. Code, §§ 1946, 1946.1(b)–(d).) The Tenant Protection Act of 2019 may impose additional requirements for the termination of a residential tenancy. (Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined].) This instruction should be modified accordingly if applicable.

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.

Do not give this instruction to terminate a tenancy if the tenant is receiving federal financial assistance through the Section 8 program. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1115 [29 Cal.Rptr.3d 262, 112 P.3d 647]; Civ. Code, § 1954.535 (90 days' notice required).) Specific grounds for terminating a federally subsidized low-income housing tenancy are required and must be set forth in the notice. (See, e.g., 24 C.F.R. § 982.310.)

See CACI No. 4307, *Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy*, for an instruction on proper advanced written notice.

Sources and Authority

- Unlawful Detainer Based on Holdover After Expiration of Term. Code of Civil Procedure section 1161(1).
- Automatic Renewal Absent Notice of Termination on Expiration of Term. Civil Code section 1946.
- Time and Manner of Giving Notice of Termination. Civil Code section 1946.1.
- Presumption That Term Is Based on Period for Which Rent Is Paid. Civil Code section 1944.
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- Conversion of Unlawful Detainer to Ordinary Civil Action if Possession Not at Issue. Civil Code section 1952.3(a).
- "Commercial Real Property" and "Qualified Commercial Tenant" Defined. Civil Code section 1946.1(k).
- " 'In order that such an action may be maintained the conventional relation of landlord and tenant must be shown to exist. In other words, the action is limited to those cases in which the tenant is estopped to deny the landlord's title.' " (*Fredericksen v. McCosker* (1956) 143 Cal.App.2d 114, 116 [299 P.2d 908], internal citations omitted.)

- "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].)

- "The Act provides that as a prerequisite to filing an unlawful detainer action based on a terminated month-to-month tenancy, the landlord must serve the tenant with a 30-day written notice of termination." (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 113 [78 Cal.Rptr.2d 799], internal citations omitted.)

- "Proper service on the lessee of a valid … notice … 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 … notice … 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 … 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 … notice … 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 … 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 (11th ed. 2017) Real Property, § 707 et seq.

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 8-B, *Unlawful Detainer Complaint*, ¶ 8:85 (The Rutter Group)

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.69–8.80

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.3, 7.5, 7.11

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.27 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.07

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

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, 236.40 (Matthew Bender)

Miller & Starr California Real Estate 4th, § 34:147 (Thomson Reuters)

4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy

[*Name of plaintiff***] contends that [he/she/***nonbinary pronoun***/it] properly gave [***name of defendant***] written notice that the tenancy was ending. To prove that the notice contained the required information and was properly given, [***name of plaintiff***] must prove all of the following:**

1. **That the notice informed [***name of defendant***] in writing that the tenancy would end on a date at least [30/60] days after notice was given to [him/her/***nonbinary pronoun***/it];**

2. **That the notice was given to [***name of defendant***] at least [30/60] days before the date that the tenancy was to end; and**

3. **That the notice was given to [***name of defendant***] at least [30/60] days before [***insert date on which action was filed***];**

Notice was properly given if [*select one or more of the following manners of service:***]**

[the notice was delivered to [*name of defendant***] personally[./; or]]**

[the notice was sent by certified or registered mail in an envelope addressed to [*name of defendant***], in which case notice is considered given on the date the notice was placed in the mail[./; or]]**

[[*name of defendant***] was not at [home or work/the commercial rental property], and the notice was left with a responsible person at [[***name of defendant***]'s home or place of work/the commercial property], and a copy was also mailed in an envelope addressed to [***name of defendant***] at [[his/her/***nonbinary pronoun***] residence/the commercial property]. In this case, notice is considered given on the date the second notice was placed in the mail[./; or]]**

[*for a residential tenancy:*

[*name of defendant***]'s place of residence and work could not be discovered, or a responsible person could not be found at either place, and (1) the notice was posted on the property in a place where it would easily be noticed, (2) a copy was given to a person living there if someone could be found, and (3) a copy was also mailed to the property in an envelope addressed to [***name of defendant***]. In this case, notice is considered given on the date the second notice was placed in the mail.]**

[*or for a commercial tenancy:*

at the time of attempted service, a responsible person could not be found at the commercial rental property through the exercise of reasonable diligence, and (1) the

notice was posted on the property in a place where it would easily be noticed, and (2) a copy was also mailed to the address of the commercial property in an envelope addressed to [*name of defendant*]. In this case, notice is considered given on the date the second notice was placed in the mail.]

[The [30/60]-day notice period begins on the day after the notice was given to [*name of defendant*]. If the last day of the notice period falls on a Saturday, Sunday, or holiday, [*name of defendant*]'s time to vacate the property is extended to include the first day after the Saturday, Sunday, or holiday that is not also a Saturday, Sunday, or holiday.]

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*New August 2007; Revised December 2010, June 2011, December 2011, May 2020, July 2025**

Directions for Use

Select the applicable number of days' notice required by statute. Thirty days is sufficient for commercial tenancies, residential tenancies of less than a year~~'s duration~~, commercial tenancies by qualified commercial tenants of less than a year, and certain transfers of the ownership interest to a bona fide purchaser. For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more~~'s duration~~, 60 days is generally required. (Civ. Code, §§ 1946, 1946.1(b)–(d).)

If 30 days' notice is sufficient and the lease provided for a notice period other than the statutory 30-day period (but not less than 7), insert that number instead of "30" or "60" throughout the instruction. (Civ. Code, § 1946.)

Select all manners of service used, including personal service, certified or registered mail, substituted service by leaving the notice at the defendant's home or place of work or at the rental property, and substituted service by posting on the property. (See Civ. Code, §§ 1946, 1946.1(f); Code Civ. Proc., § 1162.)

Read the next-to-last paragraph if the last day of the notice period fell on a Saturday, Sunday, or holiday.

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.

The Tenant Protection Act of 2019 and/or local ordinances may impose additional requirements for the termination of a rental agreement. (See, e.g., Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined].) This instruction should be modified accordingly if applicable.

Sources and Authority

- Automatic Renewal of Tenancy at End of Term. Civil Code section 1946.
- Time and Manner of Giving Notice of Termination. Civil Code section 1946.1.
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- Manner of Service of Notice. Code of Civil Procedure section 1162.
- "Commercial Real Property" and "Qualified Commercial Tenant" Defined. Civil Code section 1946.1(k).
- "[T]he service and notice provisions in the unlawful detainer statutes and [Code of Civil Procedure] section 1013 are mutually exclusive, and thus, section 1013 does not extend the notice periods that are a prerequisite to filing an unlawful detainer action." (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 112 [78 Cal.Rptr.2d 799].)
- "Section 1162 does not authorize service of a … notice … 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 v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 516 [65 Cal.Rptr.2d 457], original italics, internal citation omitted.)
- "[D]efendant admitted in his answer that he 'ultimately received [the relevant] notice' but 'affirmatively allege[d] that he was not properly and legally served' with a valid notice. We find that, under the circumstances of this case, the defendant waived any defect in the challenged service of the notice under section 1162, subdivision 1." (*Valov, supra,* 168 Cal.App.3d at p. 876.)
- "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 … 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 … notice … provided in 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 … 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.)

- "In commercial leases the landlord and commercial tenant may lawfully agree to notice procedures that differ from those provided in the statutory provisions governing unlawful detainer." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p.750.)

- "[E]ven if some policy rationale might support such a waiver/forfeiture [by actual receipt] rule in the residential lease context, there is no basis to apply it in the commercial context where matters of service and waiver are prescribed in the lease itself. Nothing in the parties' lease suggests actual receipt of a notice to quit results in the waiver or forfeiture of [tenant]'s right to service accomplished in the manner prescribed. To the contrary, the lease specifically provides, 'No covenant, term or condition, or breach' of the lease 'shall be deemed waived except if expressly waived in a written instrument executed by the waiving party.' Although [tenant's agent] acted on the notice to quit by attempting to deliver the rent check, neither her fortuitous receipt of the notice nor her actions in response to it constitutes an express waiver of the notice provisions in the lease." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p. 752, internal citation omitted.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 707 et seq., 760

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 8-B, *Unlawful Detainer Complaint*, ¶¶ 8:68, 8:69 (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶¶ 7:119, 7:190 et seq. (The Rutter Group)

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.69–8.80

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) § 5.3, Ch. 7

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.27 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.11, 5.12

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.11 (Matthew Bender)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.10–236.12 (Matthew Bender)

Miller & Starr California Real Estate 4th, §§ 34:175, 34:181, 34:182 (Thomson Reuters)

4409. Remedies for Misappropriation of Trade Secret

If [*name of plaintiff*] proves that [*name of defendant*] misappropriated [his/her/*nonbinary pronoun*/its] trade secret[s], then [*name of plaintiff*] is entitled to recover damages if the misappropriation caused [[*name of plaintiff*] to suffer an actual loss/ [or] [*name of defendant*] to be unjustly enriched].

[If [*name of defendant*]'s misappropriation did not cause [[*name of plaintiff*] to suffer an actual loss/ [or] [*name of defendant*] to be unjustly enriched], [*name of plaintiff*] may still be entitled to a reasonable royalty for no longer than the period of time the use could have been prohibited. However, I will calculate the amount of any royalty.]

*New December 2007; Revised July 2025**

Directions for Use

Give this instruction with CACI No. 4401, *Misappropriation of Trade Secrets—Essential Factual Elements*, ~~in all cases~~ if the plaintiff is seeking damages. For simplicity, this instruction uses the term "damages" to refer to both actual loss and unjust enrichment, even though, strictly speaking, unjust enrichment may be considered a form of restitution rather than damages.

Select the nature of the recovery sought; either for the plaintiff's actual loss or for the defendant's unjust enrichment, or both. If the plaintiff's claim of actual injury or loss is based on lost profits, give CACI No. 3903N, *Lost Profits (Economic Damage)*. If unjust enrichment is alleged, give CACI No. 4410, *Unjust Enrichment*.

If neither actual loss nor unjust enrichment is provable, Civil Code section 3426.3(b) provides for a third, alternate remedy: a reasonable royalty for no longer than the period of time the use could have been prohibited. Both the statute and case law indicate that the question of a reasonable royalty should not be presented to the jury. (See Civ. Code, § 3426.3(b) [*the court* may order the payment of a reasonable royalty]; ~~*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 628 [12 Cal.Rptr.2d 741];~~ *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 571–572 [319 Cal.Rptr.3d 205] [only the court had statutory authority to impose an injunction or assess a reasonable royalty]; see also Civ. Code, § 3426.2(b) [court may issue an injunction that conditions future use of a trade secret on payment of a reasonable royalty].) ~~However, no reported California state court case has directly held that "reasonable royalty" issues should not be presented to the jury. (But see *Unilogic, Inc., supra,* 10 Cal.App.4th at p. 627.)~~ Include the optional second paragraph if the court wants to advise the jury that even if it finds that the plaintiff suffered no actual loss and that the defendant was not unjustly enriched, the plaintiff may still be entitled to some recovery.

~~For simplicity, this instruction uses the term "damages" to refer to both actual loss and unjust enrichment, even though, strictly speaking, unjust enrichment may be considered a form of restitution rather than damages.~~

Sources and Authority

- Remedies for Misappropriation of Trade Secret. Civil Code section 3426.3.

- "Under subdivision (a), a complainant may recover damages for the actual loss caused by misappropriation, as well as for any unjust enrichment not taken into account in computing actual loss damages. Subdivision (b) provides for an alternative remedy of the payment of royalties from future profits where 'neither damages nor unjust enrichment caused by misappropriation [is] provable.' " (*Ajaxo Inc. v. E*Trade Group, Inc.* (2005) 135 Cal.App.4th 21, 61 [37 Cal.Rptr.3d 221].)

- ~~"[B]ased on the plain language of the statute, the Court -- not the jury -- determines if and in what amount a royalty should be awarded. See Cal. Civ. Code section 3416.3(b) ('the Court may order payment of a reasonable royalty')." (*FAS Techs. v. Dainippon Screen Mfg.* (N.D. Cal. 2001) 2001 U.S. Dist. LEXIS 15444, **9–10.)~~

- "In sum, the jury found [defendant] misappropriated [plaintiff's] trade secrets by acquiring, using, or disclosing them by improper means. That constituted a finding by the trier of fact that misappropriation occurred, which in turn permitted the trial court to consider whether to impose an injunction or assess a reasonable royalty. The court had statutory authority to impose those remedies even though the jury found that the legal remedies submitted to it—damages or unjust enrichment—were not proven." (*Applied Medical Distribution Corp., supra,* 100 Cal.App.5th at p. 572, fn. omitted.)

- "To adopt a reasonable royalty as the measure of damages is to adopt and interpret, as well as may be, the fiction that a license was to be granted at the time of beginning the infringement, and then to determine what the license price should have been. In effect, the court assumes the existence *ab initio* of, and declares the *equitable* terms of, a supposititious license, and does this *nunc pro tunc*; it creates and applies retrospectively a compulsory license." (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 68 [171 Cal.Rptr.3d 714], original italics.)

- "Nor was it necessary to submit the liability issue to the jury in order to allow the trial court thereafter to determine a reasonable royalty or to impose an injunction. Just as [cross complainant] presented no evidence of the degree of [cross defendant]'s enrichment, [cross complainant] likewise presented no evidence that would allow the court to determine what royalty, if any, would be reasonable under the circumstances." (*Unilogic, Inc.* ~~*supra,* 10 Cal.App.4th at p.~~ *v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 628 [12 Cal.Rptr.2d 741].)

- "It is settled that, in fashioning a pecuniary remedy under the CUTSA for past use of a misappropriated trade secret, the trial court may order a reasonable royalty only where 'neither actual damages to the holder of the trade secret nor unjust enrichment to the user is provable.' 'California law differs on this point from both the [Uniform Act] and Federal patent law, neither of which require[s] actual damages and unjust enrichment to be unprovable before a reasonable royalty may be imposed.' " (*Ajaxo Inc. v. E*Trade Financial Corp.* (2010) 187 Cal.App.4th 1295, 1308 [115 Cal.Rptr.3d 168], internal citations omitted.)

- "[W]here a defendant has not realized a profit or other calculable benefit as a result of his or her misappropriation of a trade secret, unjust enrichment is not provable within the meaning of section 3426.3, subdivision (b), whether the lack of benefit is determined as a matter of law or as a matter of fact. To hold otherwise would place the risk of loss on the wronged plaintiff, thereby discouraging innovation and potentially encouraging corporate thievery where anticipated profits might be minimal but other valuable but nonmeasureable benefits could accrue." (*Ajaxo Inc., supra,* 187 Cal.App.4th at p. 1313 [jury's finding that defendant did not profit from its misappropriation of trade secrets means that unjust enrichment is not "provable" within the meaning of section 3426.3(b)].)

Secondary Sources

13 Witkin, Summary of California Law (11th ed. 2017) Equity, §§ 92–93

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 10(II)-E ¶ 10:370-10:372 (The Rutter Group)

1 Milgrim on Trade Secrets, Ch. 15, *Trial Considerations*, § 15.02 (Matthew Bender)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.54 (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition*, § 565.103[6], [7] (Matthew Bender)

Edelson & Kay, eds., Trade Secret Litigation and Protection in California (State Bar of California 2009) Ch. 11

4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 8547.8(c))

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] made a protected disclosure in good faith and that [***name of defendant***] [discharged/***specify other adverse action***] [him/her/***nonbinary pronoun***] as a result. In order to establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [***specify protected disclosure, e.g., reported waste, fraud, abuse ~~of authority~~, violation of law, threats to public health, bribery, misuse of government property***];**

2. **That [***name of plaintiff***]'s communication [disclosed/ [or] demonstrated 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];**

3. **That [***name of plaintiff***] made this communication in good faith [for the purpose of ~~remediating~~ remedying the health or safety condition];**

4. **That [***name of defendant***] [discharged/***specify other adverse action***] [***name of plaintiff***];**

5. **That [***name of plaintiff***]'s communication was a contributing factor in [***name of defendant***]'s decision to [discharge/***other adverse action***] [***name of plaintiff***];**

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

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

New December 2014; Renumbered from CACI No. 2442 and Revised June 2015; Revised July 2025

Directions for Use

Under the California Whistleblower Protection Act and the California Whistleblower Protection Enhancement Act (Gov. Code, § 8547 et seq.) (the Act), a state employee, former employee, or applicant for state employment has a right of action against any person who retaliates against ~~him or her~~ them for having made a "protected disclosure." The statute prohibits a "person" from intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against the employee or applicant. (Gov. Code, § 8547.8(c).) A "person" includes the state and its agencies. (Gov. Code, § 8547.2(d).)

The statute prohibits acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee, former employee, or applicant for state employment. (~~See~~ Gov. Code, § 8547.8(b).) If the case involves an adverse employment action other than termination, specify the action in elements 4 and 5. These elements may also be modified if constructive discharge is alleged. 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 2 alleges a protected disclosure. (See Gov. Code, § 8547.2(e) ["protected disclosure" defined].)

If an "improper governmental activity" is alleged in element 2, it may be necessary to expand the instruction with language from Government Code section 8547.2(c) to define the term. If the court has found that an improper governmental activity is involved as a matter of law, the jury should be instructed that the issue has been resolved.

If a health or safety violation is alleged in element 2, include the bracketed language at the end of element 3.

The statute addresses the possibility of a mixed-motive adverse action. If the plaintiff can establish that a protected disclosure was a "contributing factor" to the adverse action (see element 5), the employer may offer evidence to attempt to prove by clear and convincing evidence that it would have taken the same action for other permitted reasons. (Gov. Code, § 8547.8(e); see CACI No. 4602, *Affirmative Defense—Same Decision*.)

The affirmative defense includes refusing an illegal order as a second protected matter (along with engaging in protected disclosures). (See Gov. Code, § 8547.8(e); see also Gov. Code, § 8547.2(b) [defining "illegal order"].) However, Government Code section 8547.8(c), which creates the plaintiff's cause of action under the Act, mentions only making a protected disclosure; it does not expressly reference refusing an illegal order. But arguably, there would be no need for an affirmative defense to refusing an illegal order if the refusal itself is not protected. Therefore, whether a plaintiff may state a claim based on refusing an illegal order may be unclear; thus the committee has not included refusing an illegal order as within the elements of this instruction.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- California Whistleblower Protection Enhancement Act. Government Code section 8547.2.
- Civil Action Under California Whistleblower Protection Act. Government Code section 8547.8(c).
- "Employee" Defined. Government Code section 8547.2(a).
- "Improper Governmental Activity" Defined. Government Code section 8547.2(c).
- "Person" Defined. Government Code section 8547.2(d).
- "Protected Disclosure" Defined. Government Code section 8547.2(e).
- Governmental Claims Act Not Applicable. Government Code section 905.2(h).

- "The [Whistleblower Protection Act] prohibits improper governmental activities, which include interference with or retaliation for reporting such activities." (*Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 939 [163 Cal.Rptr.3d 530].)

- "The CWPA 'prohibits retaliation against state employees who "report waste, fraud, abuse of authority, violation of law, or threat to public health" [citation].' A protected disclosure under the CWPA is 'a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity, or (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.' " (*Levi v. Regents of University of California* (2017) 15 Cal.App.5th 892, 902 [223 Cal.Rptr.3d 577], internal citation omitted.)

- "[Government Code] Section 8547.8 requires a state employee who is a victim of conduct prohibited by the [Whistleblower Protection] Act to file a written complaint with the Personnel Board within 12 months of the events at issue and instructs, 'any action for damages shall not be available to the injured party …' unless he or she has filed such a complaint. The Legislature could hardly have used stronger language to indicate its intent that compliance with the administrative procedure of sections 8547.8 and 19683 is to be regarded as a mandatory prerequisite to a suit for damages under the Act than to say a civil action is 'not … available' to persons who have not complied with the procedure." (*Bjorndal v. Superior Court* (2012) 211 Cal.App.4th 1100, 1112−1113 [150 Cal.Rptr.3d 405], internal citations omitted.)

- "Exposing conflicts of interest, misuse of funds, and improper favoritism of a near relative at a public agency are matters of significant public concern that go well beyond the scope of a similar problem at a purely private institution. State employees should be free to report violations of those policies without fear of retribution." (*Levi, supra,* 15 Cal.App.5th at p. 905.)

- "Complaints made 'in the context of internal administrative or personnel actions, rather than in the context of legal violations' do not constitute protected whistleblowing." (*Levi, supra,* 15 Cal.App.5th at p. 904.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 284 et seq., 303–304

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-B, *Retaliation Under Other Whistleblower Statutes*, ¶ 5:1740 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c], [3] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

4602. Affirmative Defense—Same Decision (Gov. Code, § 8547.8(e))

If [*name of plaintiff*] proves that [his/her/*nonbinary pronoun*] [making a protected disclosure/refusing an illegal order] was a contributing factor to [his/her/*nonbinary pronoun*] [discharge/*specify other adverse action*], [*name of defendant*] is not liable if [he/she/*nonbinary pronoun*/it] proves by clear and convincing evidence that [he/she/*nonbinary pronoun*/it] would have discharged [*name of plaintiff*] anyway at that time, for legitimate, independent reasons.

*New December 2014; Renumbered from CACI No. 2443 and Revised June 2015; Revised July 2025**

Directions for Use

Give this instruction in a so-called same-decision or mixed-motive case under the California Whistleblower Protection Act and the California Whistleblower Protection Enhancement Act. (See Gov. Code, § 8547 et seq.; CACI No. 4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*.) A mixed-motive case is one in which there is evidence of both a retaliatory and a legitimate reason for the adverse action. Even if the jury finds that the retaliatory reason was a contributing factor, the employer may avoid liability if it can prove by clear and convincing evidence that it would have made the same decision anyway for a legitimate reason. (Gov. Code, § 8547.8(e).)

Select "refusing an illegal order" if the court has allowed the case to proceed based on that basis. The affirmative defense statute includes refusing an illegal order as protected activity along with making a protected disclosure. The statute that creates the plaintiff's cause of action does not expressly mention refusing an illegal order. (Compare Gov. Code, § 8547.8~~(e)~~(c) with Gov. Code, § 8547.2(c); see Gov. Code, § 8547.2(b) [defining "illegal order"], (e) [defining "protected disclosure"].) See the Directions for Use to CACI No. 4601.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- California Whistleblower Protection Enhancement Act. Government Code section 8547.2.
- Same-Decision Affirmative Defense. Government Code section 8547.8(e).
- "Illegal Order" Defined. Government Code section 8547.2(b).
- "Protected Disclosure" Defined. Government Code section 8547.2(e).
- "Guided by *Lawson* [*v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703 [289 Cal.Rptr.3d 572, 503 P.3d 659]] and applying its reasoning, we conclude that Government Code section 8547.10, subdivision (e), rather than *McDonnell Douglas*, provides the relevant framework for analyzing claims under Government Code section 8547.10." (*Scheer v. Regents of University of California* (2022) 76 Cal.App.5th 904, 916 [291 Cal.Rptr.3d 822].)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 302–307A

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-B, *Retaliation Under Other Whistleblower Statutes*, ¶ 5:1790 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

ITC CACI 25-01

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
1013. Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements (*New*)	California Association of Realtors by Robert Bloom Senior Counsel Sacramento	The new Civil Jury Instructions for the "Landlord's Liability for Dangerous Dog Kept on Property," is an inaccurate statement of the law. It leaves out the phrase, "vicious nature" and introduces the word "tendency." The result is that this jury instruction creates a lower threshold of landlord liability than the actual law currently admits.	The committee disagrees. The committee chose to express these requirements as "a nature or tendency to be dangerous." The committee believes the phrasing is accurate and uses language that is understandable to an average juror.
		The inaccuracy appears in question #2. "Did [name of defendant landlord] know, or must [name of defendant landlord] have known, before the [attack/other incident] that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous?"	No further response required.
		The cases which the Judicial Counsel cite as the basis for this instruction do not use the phrase "tendency to be dangerous." A word search of all five case that the Judicial Counsel cites reveals that the word "tendency" appears only one time. On the other hand, the word "propensity" or "propensities," which the word tendency is replacing, appears approximately 76 times in the five cited cases. These words are not synonymous. Propensity is more intense and more inherent to the nature of the animal then tendency suggests. Merriam-webster.com/dictionary defines propensity as an "often intense natural inclination or preference." It goes on to say that propensity implies "a deeply ingrained and usually irresistible inclination." In reviewing the definitions of these two words online, sometimes the definitions of propensity will use the word tendency, but in doing so it is made clear that the words have	Similar to the reasoning supplied above, the committee believes that propensity and propensities are not easily understood.

Instruction(s)	Commenter	Comment	Committee Response
		different meanings. For example, Britannica.com/dictionary defines propensity as "a strong natural tendency to do something." This definition highlights that the word tendency alone loses the key elements that distinguish it from propensity, namely, that propensity is both stronger and more in the nature animal. The upshot is that the word tendency sets a lower standard as to the degree of dangerousness that the landlord must be aware of.	
		Another critical defect in the Judicial Counsel Instruction is that it leaves out of the instruction the idea of "vicious nature." The word "vicious," "viciousness" or "vicious nature" appears approximately 75 times in the five cases. For example, in Donchin v Guerrero the opinion begins, "In this dog attack case we conclude the injured plaintiff raised a triable issue whether defendant landlord knew about the vicious propensities of his tenant's two Rottweilers." Here is a sampling of the standards used in various cases as cited in Salinas: "Consistent with this rule, "a landlord owes a duty of care to his tenant's invitees to prevent injury from the tenant's vicious dog when the landlord has 'actual knowledge' of the dog's vicious nature in time to protect against the dangerous condition on his property." (Yuzon v. Collins (2004) 116 Cal.App.4th 149, 152, 10 Cal.Rptr.3d 18.) Conversely, "it is well established **741 that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent	The committee concluded that the same authorities cited also support "dangerous," which is a term more easily understood than vicious, viciousness, or vicious nature."

Instruction(s)	Commenter	Comment	Committee Response
		the harm." (Chee v. Amanda Goldt Property Management, supra, 143 Cal.App.4th 1360, 1369, 50 Cal.Rptr.3d 40; see also Yuzon, supra, at p. 163, 10 Cal.Rptr.3d 18; Donchin v. Guerrero (1995) 34 Cal.App.4th 1832, 1838, 41 Cal.Rptr.2d 192; Uccello v. Laudenslayer (1975) 44 Cal.App.3d 504, 507, 118 Cal.Rptr. 741 (Uccello).) " ' "[A] landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." ' (Yuzon, supra, at p. 163, 10 Cal.Rptr.3d 18, quoting Uccello, supra, at p. 514, 118 Cal.Rptr. 741; see also Donchin, supra, at p. 1838, 41 Cal.Rptr.2d 192 ['a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person'].)" (Chee, supra, at pp. 1369–1370, 50 Cal.Rptr.3d 40; see also Martinez v. Bank of America (2000) 82 Cal.App.4th 883, 892, 98 Cal.Rptr.2d 576.)" As is evident, the phrases "dangerous propensity" and "vicious nature" are the typically employed to describe the animal's propensity to attack.	
		Therefore, I propose that the jury instruction #2 be written as follows: "Did [name of defendant landlord] know, or must [name of defendant landlord] have known, before the [attack/other incident] that [a] dog[s] being kept on the premises had a vicious nature or dangerous propensity? ____ Yes ____ No"	The committee does not see improved accuracy or clarity in the proposed alternative phrasing.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions	Element 2 requires actual knowledge. We believe "knew" is appropriate and "or must have known" should be deleted. The phrase "or must have known" is both unclear and unnecessary. CACI 202, *Direct and Indirect Evidence*	The committee disagrees. The Court of Appeal in *Fraser v. Farvid* observed that actual knowledge "can be satisfied 'by

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
	Committee Sacramento	explains circumstantial evidence more clearly and can be given if desired.	circumstantial evidence the landlord must have known about the dog's dangerousness as well as direct evidence he actually knew.' " (*Fraser v. Farvid* (2024) 99 Cal.App.5th 760, 763 [318 Cal.Rptr.3d 215], citing *Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838 [41 Cal. Rptr. 2d 192].) The committee concluded that a *must have known* standard was important to include, as it differs from the more familiar "should have known" standard.
	Bruce Greenlee Attorney Richmond	1. Element 1 (and throughout): I think that under general premises liability principles, all that is required is that the defendant own the dog and have control over the property. The instruction (and verdict form) should not be limited to landlord owners. If the tenant owns the dog, the tenant is on the hook. (See *Chee*, cited in the [Sources and Authority]).	Based on decisional authority cited in the Sources and Authority, the committee has recommended a premises liability instruction that addresses a *landlord's* liability for a dog the landlord does not own. The instruction is not for use in a more general premises liability case involving a tenant's liability.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
VF-1003. Landlord's Liability for Dangerous Dog Kept on Property (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We would delete ", or must *name of defendant landlord*] have known," in Question 2 for the reasons stated above.	See the committee's response to CLA's comment for CACI No. 1031 above.
		b. We would add optional questions on the comparative negligence of plaintiff and others, as in VF-401 and VF-402.	The committee does not recommend additional questions on comparative negligence, which may not be appropriate in all cases. The committee also does not recommend additional Directions for Use content or cross-references regarding the comparative negligence of the plaintiff and others. Like other verdict forms for negligence causes of action (see for example CACI No. VF-500 (Medical Negligence) and CACI No. VF-1100 (Dangerous Condition of Public Property)), the verdict form is a model. Comparative fault can be addressed if needed.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
1621. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
Factual Elements (*Revise*)	Bruce Greenlee Attorney Richmond	1. *Downey* is a good case, which clarifies the previous unclear confusion in the law. I would add its holding to the [Directions for Use], in place of the proposed to-be-deleted ponderings, something like this: "It is sufficient if the plaintiff perceives the injury producing event. It is not also required that the plaintiff perceive the defendant's role in creating that event. (*Downey*)	The committee considered the option of including *Downey* in the Directions for Use but chose to cite it in the Sources and Authority only. The committee does not recommend repeating its holding in the Directions for Use.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
1803. Misappropriation of Name, Likeness, or Identity—Essential Factual Elements (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the third paragraph in the Directions for Use by adding a preface and would refer to both CACI No. 1302, *Consent Explained* and CACI No. 1303, *Invalid Consent*: "If the parties dispute whether plaintiff gave consent, ~~C~~consider giving an instruction explaining consent and/or invalid consent. See generally CACI No. 1302, *Consent Explained*; CACI No. 1303, *Invalid Consent*."	The committee does not recommend the alternative phrasing or additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		c. We find the sentence, "Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged," unclear and unnecessary. It is unclear whether the "type of misappropriation" refers to a common law versus a statutory claim or different aspects of plaintiff's identity. We would delete this sentence.	The committee agrees and does not recommend the new sentence. The committee, however, does recommend retaining the first sentence in the second paragraph on privacy rights for the reasons explained

Instruction(s)	Commenter	Comment	Committee Response
			below in the response to the Orange County Bar Associations.
		d. We would revise the second sentence in the fifth paragraph of the Directions for Use because the two causes of action do not necessarily cover all the same conduct. "The two causes of action overlap, and the same conduct ~~should~~ may be covered by both."	The committee agrees and recommends the suggested change.
		e. We agree with the other proposed revisions to the Directions for Use.	No further response required.
		f. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
		g. We suggest considering the addition of a reference to Labor Code section 927, effective January 1, 2025, relating to digital replicas.	The comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued; the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, likeness, or identity.	Following the previous circulation for comment, the committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on conduct. The committee also

Instruction(s)	Commenter	Comment	Committee Response
		While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right *together* with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read: [*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/*nonbinary possessive pronoun*] [name/likeness/identity].	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800,	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in *some* of the instructions, while leaving others (e.g., 1800, 1801 ,1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	
		c. If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged (while having references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.
1804A. Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the second sentence in the Directions for Use to refer to "plaintiff" rather than "person," consistent with the instruction.	The committee recommends the suggested change in what is now the third sentence of the Directions for Use.

Instruction(s)	Commenter	Comment	Committee Response
		c. We would delete the last sentence in the second paragraph of the Directions for Use beginning, "Consider giving," for the reasons stated above relating to CACI No. 1803.	The committee agrees and recommends deleting the sentence.
		d. We suggest the following revisions to the second paragraph in the Directions for Use for greater clarity: "One's name, voice, signature, photograph, and likeness are protected under both the common law and ~~under~~ Civil Code section 3344. While the term 'identity' is sometimes used to refer to the statutorily protected categories, a plaintiff's 'identity' is protected only under the common law and not under the statute. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, *Misappropriation of Name, Likeness, or Identity*, which sets forth the common-law cause of action, may be given. ~~Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged.~~"	The committee recommends deleting the final sentence as suggested by CLA here and immediately above. The committee does not recommend the additional information suggested because it is more in the nature of legal treatise content than a Direction for Use about choices to be made with respect to CACI.
		e. We would revise the fifth paragraph in the Directions for Use in the same manner that we propose revising the same language in the Directions for Use for CACI No. 1803.	The committee does not recommend the additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		f. We agree with the other proposed revisions to the Directions for Use.	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		g. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued as the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, voice, signature, photograph, or likeness. While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeliness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right together with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	Following the previous circulation for comment, the committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on the conduct. The committee also sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read:	The committee recommends the suggested revision to the

Instruction(s)	Commenter	Comment	Committee Response
		[*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/*nonbinary possessive pronoun*] [name/voice/signature/ photograph/likeness].	proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800, 1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in some of the instructions, while leaving others (e.g., 1800, 1801, 1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		c, If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has bene alleged (while having	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.

Instruction(s)	Commenter	Comment	Committee Response
		references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	
1804B. Misappropriation of Name, Voice, Signature, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Civ. Code, § 3344(d)) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the second paragraph to match the second sentence in the Directions for Use for CACI No. 1804A, for consistency and would change "person's" to "plaintiff's," as stated above: "Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the ~~person~~plaintiff's identity at issue in the case."	The committee agrees and recommends both suggested changes.
		c. We would revise the fourth paragraph in the Directions for Use in the same manner that we propose revising the identical paragraph in the Directions for Use for CACI No. 1804A.	The committee does not recommend the additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		d. We agree with the other proposed revisions to the Directions for Use.	No further response required.
		e. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
	Orange County Bar Association	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up	Following the previous circulation for comment, the

Instruction(s)	Commenter	Comment	Committee Response
	by Mei Tsang, President	for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued as the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, voice, signature, photograph, or likeness in connection with a news, public affairs, or sports broadcast or account, or in connection with a political campaign. While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeliness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. . In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right together with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on the conduct. The committee also sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read: [*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the

Instruction(s)	Commenter	Comment	Committee Response
		[his/her/*nonbinary possessive pronoun*] [name/voice/signature/ photograph/likeness] in connection with a [[news/public affairs/sports] broadcast or account/political campaign].	related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800, 1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in some of the instructions, while leaving others (e.g., 1800, 1801, 1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	No further response required.
		c. If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.

Instruction(s)	Commenter	Comment	Committee Response
		type of misappropriation has bene alleged (while having references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	
1805. Affirmative Defense to Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (*Comedy III*) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title.	No response required.
		b. We would delete "*e.g., celebrity*" within brackets in the first sentence of the instruction and in elements 1 and 2. The words "other person" include "celebrity." The common law and statutory claims do not apply only to celebrities, and we believe highlighting celebrity is potentially misleading.	As reflected in the case law, a celebrity's likeness is one of the most common scenarios for this affirmative defense. The bracketed content merely supplies one example, which is common practice across CACI. The example does not preclude use for non-celebrities. The committee declines to make the suggested change.
		c. We would delete "*e.g., picture*" within brackets in the introductory paragraph and elements 1 and 2 to avoid any unintended suggestion as to the type of work for which the instruction is or is not appropriate.	The bracketed content merely supplies one example of a type of work, which is common practice across CACI. The example does not preclude use for other types of work. The committee declines to make the suggested change.
		d. Element 2 is based on *Comedy III*, which involved the use of celebrities' likeness. The "subsidiary inquiry" from *Comedy III* expressed in element 2 reflects the fact that a celebrity likeness has a value derived from the celebrity's fame. The likeness of a noncelebrity, however, generally has	Without new case law, the committee is not prepared to add a note in the Directions for Use on the applicability or inapplicability of element 2 for

Instruction(s)	Commenter	Comment	Committee Response
		no value derived from fame. We believe element 2 is not appropriate in cases involving noncelebrities where the likeness has no value derived from the person's fame. We suggest adding language to the Directions for Use to remedy this.	cases that do not involve celebrities.
	Suzanne V. Chamberlain Attorney-Mediator Newport Beach	At Item 1 of the Instruction, the revision would strike "something new" and substitute "significant creative elements." It is believed "transformative elements" better describes the degree or nature of required creative activity which must operate on an original work so to alter it and give it new expression, meaning, or message. Accordingly, it is suggested "transformative elements" be incorporated into the Instruction rather than "significant creative elements." Item 1 of the Instruction sets forth what is recognized and known as the transformative use defense aka the transformative defense aka the transformative test. In discussing this defense or associated test, cases generally use the phrase "transformative elements" to describe the creative contribution of a defendant to, for example, the likeness of a celebrity such that the likeness is markedly changed to become primarily the defendant's own expression. The California Supreme Court noted, "[t]his inquiry into whether a work is 'transformative' appears to us to be necessarily *at the heart* of any judicial attempt to square the right of publicity with the First Amendment (emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404.	The committee disagrees. Although "transformative elements" is routinely used in case law, the committee believes the recommended phrasing of item 1 better explains the concept to jurors. The provision includes "adds significant creative elements" and "giving it a new expression, meaning, or message." Taken together, the phrasing communicates to jurors that a work must be sufficiently transformative, without using that language, for the defense to apply.
		The drafters of this Instruction, however, do not use the adjective "transformative" or the phrase "transformative elements," but have used "something new" and now propose "significant creative elements" to describe the challenged	The committee disagrees for the reasons provided above.

Instruction(s)	Commenter	Comment	Committee Response
		product of the defendant's efforts. Neither the current phrase not that proposed connote the change-factor inherent in "transformative," even when coupled with the phrase "giving it a new expression, meaning, or message," found in the last two lines of this Item which are not part of the current revision.	
		Quoted by the Court in *Comedy III* from a U.S. Supreme Court case discussing copyright and fair use doctrine, the phrase reads, "adds something new … *altering* the first [work] with new expression, meaning, or message … (emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404. "Altering" indicates the change-factor operating on the first work such that the questioned work reflects the defendant's own distinct expression, meaning, or message. As written, any word or phrase sufficient to indicate this change-factor—required for the defense to obtain—is absent from Item 1 and from the Instruction. For these reasons, rather than the proposed phrase "significant creative elements," it is suggested that "transformative elements" be used in the Instruction addressing the *transformative* defense.	The committee disagrees for the reasons provided above.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision removes the phrase "something new" and substitutes the phrase "significant creative elements" at Item 1 of the instruction which sets forth the transformative use defense aka the transformative defense aka the transformative test. Cases discussing this defense/test generally use the phrase "transformative elements" to describe the creative contribution of a defendant to the likeness of a celebrity, for	The committee appreciates the concern but disagrees. Although "transformative elements" is supported by case law, the committee believes the phrasing of item 1 better explains the concept to jurors. The committee believes that the recommended content, "giving

Instruction(s)	Commenter	Comment	Committee Response
		example, such that the likeness is markedly changed to become primarily the defendant's own expression. The California Supreme Court noted, "[t]his inquiry into whether a work is 'transformative' appears to us to be necessarily at the heart of any judicial attempt to square the right of publicity with the First Amendment." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404. Neither "something new" nor the proposed "significant creative elements" seems sufficient to connote the change-factor inherent in "transformative," even when coupled with the phrase "giving it a new expression, meaning, or message," found in the last two lines of this Item and not part of the current revision. In light of this, it is believed the instruction should make reference to the transformative or transforming nature of a defendant's efforts. Accordingly, it is suggested that Item 1 of the instruction read: That the [*insert type of work, e.g., "picture"*] adds significant creative elements to [*name of plaintiff/other person, e.g. celebrity*]'s [name/voice/signature/photograph/likeness/ identity], transforming and giving it a new expression, meaning, or message; or	it a new expression, meaning, or message" is a clearer expression than "transforming" or "transformative elements."
1930. Receiving Stolen Property—Civil Liability—Essential Factual Elements (Pen. Code, § 496(c)) (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the elements of the instruction.	No response required.
		b. We would change "Property is stolen" and "Property is obtained by extortion" in the two alternative paragraphs after the elements to "Property was …," consistent with element 1.	The committee prefers the present tense for defined terms, and thus does not recommend this change. Element 1, on the other hand, is tied to a past

Instruction(s)	Commenter	Comment	Committee Response
			event and appropriately uses the past tense.
		c. Rather than explain "stolen" by reference to "theft" and then define "theft," we would explain "stolen" without reference to theft for simplicity and greater clarity: " "Property ~~is~~ was stolen if ~~it was obtained by theft. Property is obtained by theft if a person takes~~ someone took possession of the property, owned by someone else, without the owner's consent~~,~~ and with the intent either to permanently deprive the owner of that property or to deprive the owner of a major portion of the value or enjoyment of the property for an extended period of time."	The committee considered the related instructions adopted by CALCRIM, its sister advisory committee on criminal jury instructions, when it developed these definitions. The committee does not recommend removing the references to theft, which are common to CALCRIM definitions used in instructions explaining the crime of receiving stolen property. See, e.g., CALCRIM No. 1750.
		d. We would revise the second sentence in the third paragraph of the Directions for Use, referring to "Other definitions of theft," accordingly.	For the reasons stated above, the committee does not recommend the proposed change.
	Bruce Greenlee Attorney Richmond	1. [Sources & Authority], first entry: At one time, my recollection is that the preferred form was "attorney fees," solving the problem of where the apostrophe goes. [Deliberative process omitted.] (See the excerpt from *Switzer v. Wood*.)	For consistency across CACI, the committee recommends "attorney fees" but notes that CACI No. 1930 is based on Penal Code section 496, which uses the possessive phrasing, "attorney's fees."
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
VF-1930. Receiving Stolen Property—Civil Liability (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1) (*Revise*)	Bracamontes & Vlasak PC by Michael Bracamontes Attorney Oakland	Our law firm represents people that have suffered civil rights violations. On behalf of Bracamontes & Vlasak, P.C., I write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. We have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066.	The committee acknowledges Bracamontes & Vlasak's support for the proposed changes.
		The current jury instruction on the Bane Act contains errors and confusing language. The specific intent has been replaced with a recklessness standard according to the most recent case law. "But whether the appellant officers understood they were acting unlawfully was not a requirement. Reckless disregard of the 'right at issue' is all that was necessary." Cornell v. City & County of San Francisco, 17 Cal. App. 5th 766, 804 (2017). "We acknowledge that some courts have read Shoyoye as having announced 'independen[ce] from [inherent coercion]' as a requisite element of all Section 52.1	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		claims alleging search-and-seizure violations, but we think those courts misread the statute as well as the import of Venegas. By its plain terms, Section 52.1 proscribes any 'interfere[nce] with' or attempted 'interfere[nce] with' protected rights carried out 'by threat, intimidation or coercion.' Nothing in the text of the statute requires that the offending 'threat, intimidation or coercion' be 'independent' from the constitutional violation alleged." Id. at 799-800 (internal citations omitted). The California Supreme Court decided that "in pursuing relief for those constitutional violations under section 52.1, plaintiffs need not allege that defendants acted with discriminatory animus or intent, so long as those acts were accompanied by the requisite threats, intimidations, or coercion." Venegas v. County of Los Angeles, 32 Cal. 4th 820, 843 (2004). The court in Cornell, agreed that "the use of excessive force can be enough to satisfy the 'threat, intimidation or coercion' element of section 52.1." 17 Cal. App. 5th at 799. As such, the "reckless disregard" language is not only appropriate but remedies the current incorrect "intentional" language that is contained in the current CACI instruction.	
	California Employment Lawyers Association by V. James DeSimone	On behalf of California Employment Lawyers Association (CELA), California's statewide, nonpartisan and non-profit association of plaintiff's employment law attorneys, we write to respectfully submit the following comment to the proposed revisions to CACI 3066 relating to the Bane Civil Rights Act ("Bane Act") and Civil Code section 52.1, and corresponding Verdict Form 3035.	The committee acknowledges the support of CELA and its CACI subcommittee for the proposed changes.

Instruction(s)	Commenter	Comment	Committee Response
		We are attorneys at V. James DeSimone Law and Bohm Law Group who have dedicated our practice to civil rights law. We have litigated several Bane Act cases to verdict and some of these have been in the employment law context. Our experience is that trial judges often agree to a modified version of CACI Instruction 3066 because the current instruction does not accurately reflect the clear meaning of the statute as well as binding case law. In recognition of this fact, a team of Attorneys at the Consumer Attorneys of California (CAOC) and the National Police Accountability Project (NPAP) have crafted proposed revisions to CACI 3066, which accurately reflect the law in a neutral fashion. We therefore write on behalf of CELA, and its CACI Subcommittee, to submit public comment to support the proposed revisions to CACI 3066. The proposed revised instruction correctly states California law in that it: 1) provides an alternative to trial courts to instruct the jury in cases which do not involve threats of violence based on speech alone, and 2) adds the language that a defendant who acts with reckless disregard to the rights in questions violates the statute, as the Court unambiguously held in *Cornell v. City & County of San Francisco* (2017) 17 Cal. App. 5th 766, 804: "[W]hether the [defendant] officers understood they were acting unlawfully was not a requirement. Reckless disregard of the 'right at issue' is all that was necessary." The proposed revision provides use notes that clearly explain which alternative should be used, and adds case law supporting the proposed revisions.	
		First, the proposed revised CACI 3066 provides the necessary alternative instruction where the conduct is more than "speech alone" when the "speech alone" exception described in Civil Code	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		52.1(k) is not applicable. The proposed revised instruction tracks the plain text of Civil Code section 52.1 (a) and (b), which provides for a cause of action for damages when "a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state...." The California Supreme Court has held that Section 52.1 simply "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion." *Jones v. Kmart Corp*. (1998) 17 Cal. 4th 329, 334. Only these express elements are necessary to sustain a claim under Section 52.1. *See Winarto v. Toshiba Am. Elecs. Components* (9th Cir. 2001) 274 F.3d 1276, 1289; *see also*, *Venegas v. County of Los Angeles* (2004) 32 Cal. 4th 820, 841-44 (interpreting Section 52.1 according to its "unambiguous" plain language, and rejecting additional requirements not in the text of the statute); *see also Moreno v. Town of Los Gatos* (9th Cir. 2008) 267 Fed. Appx. 665, 666 ("Reading section 52.1 on its own terms, as *Venegas* directs, the statutory language clearly requires only 'threats, intimidation, or coercion.'"). The current instruction is an incorrect statement of the law and a change is required to prevent mistrials and to protect the people of California from civil rights abuses in accordance with current California law.	
		Similarly, the current instruction incorrectly instructs jurors that the plaintiff is required to prove either—they reasonably believed that if they exercised their rights defendants "would commit violence against" them, or that defendants "acted	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		violently against" them to prevent the exercise of their rights or because they exercised such rights. However, this should only be a requirement when there is "speech alone"; Section 52.1(k) states as follows: Speech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat. However, many civil rights cases, including employment law cases, involve threats, intimidation or coercion in the form of conduct such as the use of force, an arrest, or a job termination. In such cases, there is more than speech alone; the defendant uses their position of power to attempt to interfere, or interfere, to violate rights protected by the United States or California Constitutions, or their respective statutes, *and* the threats, intimidation or coercion involve some type of conduct or action, not just speech alone. The proposed revision tracks the language of the statute to establish the violation by providing the following element of proof: **That by threat, intimidation, or coercion, [***name of defendant***] interfered [or attempted to interfere] with [***name of plaintiff***]'s exercise or enjoyment of [his/her/***nonbinary pronoun***] right [***e.g., to be free from arrest without probable cause***];**	

Instruction(s)	Commenter	Comment	Committee Response
		Additionally, Courts have ruled that violence is not an element of Bane Act claims. The Ninth Circuit, and several district courts, have held that Section 52.1 has no requirement to show "violence or threat of violence" (as Civil Code section 51.7 requires). *Moreno*, 267 Fed. Appx. at 666 (the "district court erred in holding that a valid section 52.1 claim requires a plaintiff to allege violence or threats of violence"); *Cole v. Doe* (N.D. Cal. 2005) 387 F. Supp. 2d 1084, 1103 ("§ [sic] 52.1 does not by its terms require violence or threat of violence"); *Kincaid v. City of Fresno* (E.D. Cal. May 12, 2008) 2008 U.S. Dist. LEXIS 38532, at *42 (same). To the extent that the CACI instruction requires violence or threat of violence, it is incorrect. *Bates v. Arata* (N.D. Cal. March 26, 2008) 2008 U.S. Dist. LEXIS 23910, at *79.[1] [FN1] The only place where the word "violence" appears in the Bane Act is in subsection (k), which provides: Speech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.	No further response required.
		The recent case of *Murchison v. County of Tehama,* describes the elements of a Section 52.1 claim; nowhere in this discussion is violence mentioned: The Bane Act makes it unlawful for any person to interfere by threat, intimidation, or coercion, or attempt to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual secured by the Constitution or laws of California. *See Austin B. v. Escondido Union School Dist*. (2007) 149 Cal.App.4th 860,	No further response required.

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		881-883, 57 Cal.Rptr.3d 454.) " ' "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e.,'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." ' " *Cornell v. City & County of San Francisco* 17 Cal.App.5th 766, 791-792, 225 Cal.Rptr.3d 356 (2017). An Officer cannot claim qualified immunity under the Bane Act. S*ee Venegas v. County of Los Angeles* 153 Cal.App.4th 1230, 1246-47, (2007). *Murchison, 69 Cal. App. 5th at 896.* As it stands now, the current CACI instruction, as well as the corresponding special verdict form, simply get the law wrong by focusing on violence. CACI VF 3035 requires jurors to answer specific questions regarding threats or acts of violence against the plaintiff and should be changed as well.	
		Further, CACI 3066 should instruct juries that a defendant can act with "reckless disregard" of the rights in question as the proposed revision includes, and not just an "intent to deprive," as that is the law. The Bane Act protects individuals who have been subjected to interference or attempts to interfere with the exercise of constitutional or state rights, whether or not under color of law, "by threat, intimidation, or coercion." While under current case law the plaintiff is required to show that there was a "specific intent" to violate his or her rights to prevail on a Bane Act claim, such intent can be established by showing that the defendant acted with "reckless disregard of	No further response required.

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		the right at issue." The language of the statute requires threats, intimidation or coercion that violate or attempt to violate an individual's rights under federal or state law. *Cornell v. City & County of San Francisco* (2017) 17 Cal. App. 5th 766, 804. "Whether defendants "understood they were acting unlawfully [is] not a requirement. **Reckless disregard of the 'right at issue' is all that [is] necessary**." *Id.* (emphasis added). However, the current CACI 3066 instruction completely ignores the reckless disregard of rights element and standard established by *Cornell,* which has been consistently followed and not abrogated or criticized in any other decision. Instead, the current instruction mistakenly requires the plaintiff to prove that the "defendant intended to deprive the plaintiff of the enjoyment of the interests protected by the right." Several courts have held that a specific intent to deprive a right is met if there is reckless disregard of the right in question. *Murchison v. County of Tehama* followed *Cornell* stating, the element of intent is met "even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted [with the requisite specific intent]—i.e., 'in reckless disregard of constitutional [or statutory] prohibitions or guarantees. [brackets in original].'" *Murchison v. County of Tehama* (2021) 69 Cal. App. 5th 867, 896-97. The Ninth Circuit is in accord as reflected in *Reese v. County of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1045: "But it is not necessary for the defendants to have been thinking in constitutional or legal terms at the time of the incidents, because a reckless disregard for a person's constitutional rights is evidence of a specific intent to deprive that person of those rights." Similarly, the Court in *Sandoval v. Cty. of Sonoma* (2018)	

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		912 F.3d 509, 520 held: "[S]pecific intent can be shown even if the defendant did not in fact recognize the unlawfulness of his act but instead acted in reckless disregard of the constitutional right." (internal citation and quotation omitted). In *Scalia v. County of Kern* (2018 E.D. Cal) 308 F. Supp. 3d. 1064, 1084 the court emphasized: "Reckless disregard of the 'right at issue is all that is necessary" (internal citation and quotation omitted). The proposed revisions to both the CACI and special verdict form 3035 will ensure that California juries are properly instructed in civil rights cases, the statutes of which should be broadly interpreted to protect the rights of people in California.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. Proposed new alternative element 1 does not require a credible threat of violence, as is required for speech alone to support liability under the Bane Act. (Civ. Code, § 52.1(k)). We propose either adding language to the Directions for Use stating that this alternative element 1 should not be given if the threat, intimidation, or coercion involved speech alone.	The committee considered additional language in the Directions for Use on alternative element 1 but does not recommend it. The first paragraph of the Directions for Use explains when element 1's second and third options may be used.
		b. We agree with the other proposed revisions to the instruction.	No further response required.
		c. We agree with the proposed revisions to the Directions for Use.	No further response required.
		d. We agree with the proposed revisions to the Sources and Authorities.	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
	Carrillo Law Firm, LLP by Michael S. Carrillo Attorney South Pasadena	On behalf of Carrillo Law Firm, LLP, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. We are attorneys at Carrillo Law Firm, LLP who have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066. Many of our clients have suffered heinous tragedies at the hands of law enforcement that can only be rectified by a jury trial. We therefore write on behalf of Carrillo Law Firm, LLP to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources. Thank you for your attention in this matter.	The committee acknowledges Carrillo Law Firm's support for the proposed changes.
	Communities United for Restorative Youth Justice by John Vasquez, Policy & Legal Services Manager Oakland	On behalf of Communities United for Restorative Youth Justice (CURYJ), which supports families negatively impacted by police misconduct, I strongly support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's	The committee acknowledge CURYJ's support for the proposed changes.

Instruction(s)	Commenter	Comment	Committee Response
		civil rights law works for those who seek justice when their rights are violated. Thank you for taking these comments into consideration.	
	Consumer Attorneys of California by Jacqueline Serna, Deputy Legislative Director Sacramento	On behalf of the Consumer Attorneys of California (CAOC), a statewide, nonpartisan, and nonprofit association of plaintiff's attorneys, we respectfully submit this comment in strong support of the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We urge the committee to adopt these long-overdue clarifications. Many CAOC attorneys dedicate their practice to representing individuals whose civil rights have been violated. For these individuals, the legal standards set forth in CACI 3066 are critical to securing justice. However, the current jury instruction contains errors and ambiguous language, leading to inconsistent applications across courts. As a result, judges have resorted to using BAJI instructions or drafting their own, an inefficient process that consumes judicial resources and increases the likelihood of legal misinterpretation. The Bane Act has never required a showing of force or threat of force, yet the existing instruction has led to confusion on this point. The proposed amendment correctly aligns with established law and will provide much-needed clarity, ensuring consistency and reducing unnecessary litigation over jury instructions. For these reasons, we strongly support the proposed revision to CACI 3066 and urge its adoption.	The committee acknowledges CAOC's support for the proposed changes.
	Bruce Greenlee Attorney Richmond	1. What is now optional element 2 (and first optional question 2 in VF) doesn't work. Should be: "That [name of defendant] [intended to deprive [name of plaintiff]/acted with reckless disregard~~]~~ of [~~his/her/nonbinary pronoun/[~~*name of*	The committee thanks the commenter for identifying the incomplete phrasing caused by the bracketed options. The

Instruction(s)	Commenter	Comment	Committee Response
		plaintiff~~]~~'s] enjoyment of the interests protected by the right [e.g., to vote];]	committee recommends refining optional element 2 and the optional question 2 in the verdict form to make it clearer. Optional element 2 will read: That [*defendant*] [intended to deprive [*plaintiff*] of/acted with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*].The verdict form's question 2 will be similarly reformatted.
		2. Directions for Use, second paragraph: What is the reason for the deletion of the discussion on whether violence or a threat of violence is required? The only new law that I see is the *Murchison* case, and I don't read it as changing the uncertainty raised by *Shoyoye*.	The committee concluded that the existing content was not particularly helpful as Directions for Use. *Shoyoye* remains an entry in the Sources & Authority as a resource for users.
	Legal Services for Prisoners with Children by Kellie Walters, Staff Attorney Oakland	I am writing to express my strong support for the proposed amendments to the California Civil Jury Instructions (CACI) concerning the Bane Act (Civil Code § 52.1). These changes are essential to ensuring that jury instructions accurately reflect the law as amended by the Legislature and interpreted by the courts. The current CACI No. 3066 instruction does not fully align with the clear legislative intent and judicial precedent affirming that a violation of the Bane Act does not require	The committee acknowledges Legal Services for Prisoners with Children's support for the proposed changes.

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		proof of violence or threat of violence, but rather any interference with constitutional or statutory rights through "threat, intimidation, or coercion." As established in *Jones v. Kmart Corp.* (1998) and reaffirmed in *Venegas v. County of Los Angeles* (2004), the California Supreme Court has consistently applied the Bane Act according to its plain language. However, inconsistencies in jury instructions have contributed to judicial misinterpretation, requiring unnecessary elements of proof that undermine the Act's protective purpose. The proposed amendments appropriately clarify that proof of violence or threat of violence is only required when speech alone is at issue, as provided in Civil Code § 52.1(k). The proposed new instruction will significantly enhance the fairness and effectiveness of Bane Act claims by ensuring that juries are correctly instructed on the law. This will promote uniformity in court decisions, prevent unnecessary legal barriers for victims seeking justice, and uphold the legislative intent behind the Act. By adopting the proposed amendments, the Judicial Council will help ensure that civil rights cases are adjudicated based on accurate legal standards, protecting individuals from unlawful coercion, intimidation, and interference with their fundamental rights. I strongly urge the Advisory Committee to approve these necessary and long-overdue modifications to the jury instructions.	
	National Police Accountability Project by Julia Yoo, Attorney Iredale and Yoo, APC San Diego	I am a partner at Iredale and Yoo and the immediate past president of the National Police Accountability Project (NPAP). I was one of the principal authors of the proposed jury instructions on the Bane Act which was submitted to you in October of 2024.	The committee acknowledges the support of NPAP and those it represents for the proposed changes.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
		On behalf of NPAP and the victims we represent, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. I started my career by opening a non-profit to provide pro bono legal services to women and girls who had been denied medical care or had been raped in custody. My 27- year practice has centered around assisting our clients reintegrate back into society and assisting families of people who are left to die in our jails and prisons. This is one example of our cases: https://www.washingtonpost.com/nation/2025/03/04/jail-death-lawsuit-san-diego/ The jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066 are critical to these types of cases. In many cases involving denial of medical care, retaliatory arrest and sexual assault, there have been confusion and inconsistency in the instructions given to the jury. Rapes of vulnerable people in the jails and prisons frequently do not involve physical violence or threat of violence. Instead, the officers threaten to cut off phone privileges with the victim's children or to place them in administrative segregation. With my teenage clients, there is typically grooming by the officers. Because of the current CACI instructions as written, the Courts have had to grapple with these types of cases that do not involve violence, wasting valuable resources and resulting in confusing jury instructions that jurors do not understand.	

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		In my two decades service as a board member, then the president of NPAP, I have spoken with our membership on similar experiences and a number of appeals resulting from errors when the parties or judges have constructed their own instructions. Courts have used the BAJI instructions or crafted their own instructions, causing inconsistencies from case to case and from judge to judge. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources. On behalf of all the impacted victims and their families, I thank you for your time and attention to this issue.	
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
	Stephanie Padilla [No additional information provided]	I support the proposed revisions to the instructions and verdict form for Bane Act claims (3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)). These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Stephanie Padilla's support for the proposed changes.
	PHG Law Group by Danielle R. Pena, Esq. Attorney San Diego	On behalf of PHG Law Group we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. As a thirteen-year practicing civil rights attorney, I specialize in and have devoted my practice to civil rights litigation involving police and jail misconduct cases. The majority of the cases I have handled throughout my legal career are in-	The committee acknowledges PHG Law Group's support for the proposed changes.

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		custody death cases. In doing so, I routinely allege Bane Act violations. In every trial for the past few years, I have had major issues with the current Bane Act jury instruction, specifically with regard to the lack of clarity and uniformity, and inaccurate language. We therefore write on behalf of PHG Law Group to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used the BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources.	
	Kath Rogers Attorney ACLU SoCal San Diego	I support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Kath Rogers's support for the proposed changes.
	Sanjay S. Schmidt Principal Law Office of Sanjay S. Schmidt San Francisco	I agree with the proposed changes to CACI 3066. However, there are some additional clarifications that are needed to reflect the decisional law regarding the first element. As modified, it reads as follows: **[That by threat, intimidation, or coercion, [***name of defendant***] interfered [or attempted to interfere] with [***name of plaintiff***]'s exercise or enjoyment of**	The committee declines to add the alternative or explanatory language suggested. Consistent with CACI's drafting framework, element 1 of CACI No. 3066 was drafted for the most common types of case. When unique or complex circumstances prevail, users will

Instruction(s)	Commenter	Comment	Committee Response
		[his/her/*nonbinary pronoun***] right [***e.g., to be free from arrest without probable cause***];]** It should have alternative or explanatory language, however, that reads as follows: **the threat, intimidation, or coercion can be inherent in the conduct of the Defendant, including the use of excessive force, falsely arresting / detaining / or imprisoning the plaintiff, or acting deliberately indifferent to the plaintiff's medical needs**. **A transactionally separate act of threat, intimidation, or coercion is <u>not</u> required.**	have to adapt the instructions to the particular case.
		The Bane Act has been the subject of much litigation in federal district courts, and the "Bane Act's requirement that interference with rights must be accomplished by threats[,] intimidation or coercion 'has been the source of much debate and confusion.'" *Cornell v. City & Cty. of S.F.*, 17 Cal. App. 5th 766, 801 (2017) (quoting *McKibben v. McMahon* (C.D.Cal., Apr. 17, 2015, No. EDCV 14-02171 JGB (SPx)) 2015 U.S.Dist. Lexis 176696, p. *7 (*McKibben*)). However, *Cornell*, *supra*, brought clarity by rejecting the proposition that a transactionally separate act of threat, intimidation, or coercion is required to establish a claim. *Cornell*, 17 Cal. App. 5th at 800. The *Cornell* opinion notably recognized that coercive conduct can occur in a custodial jail setting in a variety of ways, including without any physical force being used and without any express threats. 17 Cal. App. 5th at 802 n.31 (citing *McKibben, supra*, 2015 U.S.Dist. Lexis 176696 at p. *8 ["coercive choice" forced upon gay, bisexual or transgender inmates to accept segregated housing with fewer privileges than other inmates]; *M.H. v. County of Alameda*, 90 F. Supp. 3d 889, 898 (N.D. Cal. 2013) [deliberate indifference to inmate's medical needs].)	The committee does not rely on nonbinding federal authority for state law claims.

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		The most thoroughly researched and persuasively reasoned opinions issued by U.S. District Courts in California that have considered the issue have concluded that a valid claim for deliberate indifference to an inmate's right to medical care in a jail forms the basis for a Bane Act claim. *Scalia v. Cty. of Kern, et al.*, 308 F. Supp. 3d 1064, 1084 (E.D. Cal. 2018); *Lapachet v. Cal. Forensic Med. Grp., Inc.*, 313 F. Supp. 3d 1183, 1195-96 (E.D. Cal. 2018) (noting *Cornell* cited *M.H.*, 90 F.Supp.3d at 898–99, approvingly, "where the district court held that a prisoner who alleges deliberate indifference to serious medical need not allege threats, coercion, and intimidation independent of that deliberate indifference to state a Bane Act claim.") (citing *Cornell*, 17 Cal. App. 5th at 802 n.31). "[A] prisoner who successfully proves that prison officials acted or failed to act with deliberate indifference to his medical needs . . . adequately states a claim for relief under the Bane Act." *M.H. v. Cty. of Alameda*, 90 F. Supp. 3d 889, 899 (N.D. Cal. 2013).[1] Indeed, in 2016, Judge Drozd of the Eastern District canvassed the law on the issue of what is required to plead a Bane Act claim for deliberate indifference to medical needs, including whether it requires that threats and coercion independent of the constitutional violation be independently pleaded, and adopted the reasoning of *M.H.* and other cases, holding that "**threats**, **coercion**, **and intimidation are inherent in a deliberate indifference claim**." *Atayde v. Napa State Hosp.*, No. 116CV00398DADSAB, 2016 WL 4943959, at *8 (E.D. Cal. Sept. 16, 2016) (emphasis added) (citing *Martinez v. County of Sonoma*, Case No. 15-cv-01953-JST, 2015 WL 5354071, at * 9 (N.D. Cal. Sept. 14, 2015); *D.V. v. City of Sunnyvale*, 65 F. Supp. 3d 782, 789 (N.D. Cal. 2014) ("This court therefore follows the substantial and growing authority that restricts *Shoyoye* to	

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		cases where the defendant's actions were negligent [and holds that] Section 52.1 does not require threats, coercion, or intimidation independent from the threats, coercion, or intimidation inherent in the alleged constitutional or statutory violation."). In denying a motion to dismiss a Bane Act claim in a subsequent jail suicide case, Judge Drozd persuasively reasoned as follows: "Plaintiffs bringing Bane Act claims for deliberate indifference to serious medical needs must only allege prison officials 'knowingly deprived [them] of a constitutional right or protection through acts that are inherently coercive and threatening,' **such as housing a prisoner in an inappropriate cell**, **failing to provide treatment plans or adequate mental health care**, **and failing to provide sufficient observations**." *Page v. Cnty. of Madera*, No. 1:17-cv-00849-DAD-EPG, 2017 WL 5998227, at *4 (E.D. Cal. Dec. 4, 2017) (emphasis added) (citing *Atayde*, 2016 WL at *8, n.1). Judge O'Neill of the Eastern District also followed *M.H.* and reasoned, in an order that has been widely cited and adopted, denying a defendant's motion to dismiss the plaintiff's Bane Act claim in a case involving the in-custody death of a pretrial detainee, that "a prisoner who successfully proves that prison officials acted or failed to act with deliberate indifference to his medical needs in violation of his constitutional rights . . . adequately states a claim for relief under the Bane Act." *Scalia*, 308 F. Supp. 3d at 1084 (quoting *M.H.*, 90 F. Supp. 3d at 898-99). Indeed, Judge Bernal of the Central District recently observed that, "the court within this circuit that has analyzed the issue mostly thoroughly—i.e., Scalia v. Cty. of Kern, 308 F. Supp. 3d 1064 (E.D. Cal. 2018)—concluded that an adequately pled claim for deliberate indifference suffices to state a Bane Act claim." *Barry v.*	

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		Cnty. of Riverside, No. EDCV2101770JGBKKX, 2022 WL 2063247, at *7 (C.D. Cal. May 11, 2022) (citing *Id*. at 1084). The court in *Barry* followed *Scalia*, noting, "[t]he Court agrees with the reasoning in Scalia and finds that a successfully pled deliberate-indifference claim suffices to state a Bane Act claim because of the coercion, or specific intent, inherent in the deliberate-indifference standard." *Barry*, 2022 WL at *7. Judge Curiel of the Southern District, also following the reasoning of *Scalia* in upholding a Bane Act claim on this basis, observed that, "[s]everal district courts have concluded that an allegation of a defendant's deliberate indifference to a plaintiff's serious medical needs suffices to state a claim under the Bane Act because of the coercion, or specific intent, inherent in the deliberate indifference standard." *Greer v. Cnty. of San Diego*, No. 3:19-CV-0378-GPC-AGS, 2021 WL 615046, at *9 (S.D. Cal. Feb. 17, 2021) (citing *Lapachet*, 313 F. Supp. 3d at 1195, *Scalia*, 308 F. Supp. 3d at 1084, and *M.H.*, 90 F. Supp. 3d at 898, *supra*, approvingly). A number of other courts have also cited *Scalia* approvingly for the proposition that an adequately pleaded deliberate indifference claim sufficiently alleges a Bane Act claim. *Luttrell v. Hart*, No. 5:19-CV-07300-EJD, 2020 WL 5642613, at *5 (N.D. Cal. Sept. 22, 2020); *Graves v. California Dep't of Corr. & Rehab.*, No. EDCV171086JGBSPX, 2019 WL 8168060, at *6 (C.D. Cal. Nov. 14, 2019); *Est. of Miller v. Cnty. of Sutter*, No. 220CV00577KJMDMC, 2020 WL 6392565, at *18 (E.D. Cal. Oct. 30, 2020). [1] As noted above, the *Cornell* Court cited *M.H.* approvingly in footnote 31 as taking the correct view. That is an important indicator of the weight given to *M.H.* and its progeny by California appellate courts. Other notable decisions include:	

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		Polanco v. California., No. 21-cv-06516-CRB, 2022 WL 1539784, at *4 (N.D. Cal. May 16, 2022) ("[A] defendant who acts with deliberate indifference toward an inmate may satisfy the 'threat, intimidation, or coercion' element, as the custody context makes that violation especially coercive.") (citing *M.H. v. Cnty of Alameda*, 90 F. Supp. 3d 889, 898–99 (N.D. Cal. 2013) (coercion element satisfied where plaintiffs alleged deliberate indifference to an inmate's medical needs); *Atayde v. Napa State Hosp.*, No. 1:16-cv-00398-DAD-SAB, 2016 WL 4943959, at *8 (E.D. Cal. Sept. 16, 2016) (holding "that threats, coercion, and intimidation are inherent in a deliberate indifference claim."); *Luttrell v. Hart*, No. 5:19-cv-07300-JD, 2020 WL 5642613, at *5 (N.D. Cal., Sept. 22, 2020) (coercion element satisfied where plaintiffs alleged deliberate indifference to an inmate's safety); *Barry v. Cnty. of Riverside*, No. EDCV21-01770 JGB (KKx), 2022 WL 2063247, at *7 (C.D. Cal. May 11, 2022) (explaining that the court within this circuit that has analyzed the issue mostly thoroughly—i.e., *Scalia v. Cty. of Kern*, 308 F. Supp. 3d 1064 (E.D. Cal. 2018)—concluded that an adequately pled claim for deliberate indifference suffices to state a Bane Act claim.").	
	Max Schoening Attorney Qureshi Law Los Angeles	I support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Max Schoening's support for the proposed changes.
	Taylor & Ring and Consumer Attorneys of California by John C. Taylor and Neil K. Gehlawat	On behalf of the Consumer Attorneys of California, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and	The committee acknowledges the support of Taylor & Ring and the Consumer Attorneys of California for the proposed changes. The committee also

Instruction(s)	Commenter	Comment	Committee Response
	Civil Rights Attorneys Manhattan Beach	urge that the committee adopt these long overdue clarifications. We are civil rights lawyers who have tried police misconduct cases in numerous venues across the state of California. We have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066. We therefore write on behalf of our law firm, Taylor & Ring, and Consumer Attorneys of California to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used the BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources.	notes that CAOC's support for the proposal was expressed in a separate comment above.
VF-3035. Bane Act (Civ. Code, § 52.1) (*Revise*)	Commenters for CACI No. 3066 above	See comments on CACI No. 3066 above.	No further responses required.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the other proposed revisions to the verdict form.	The committee acknowledges California Lawyer Association's support for the proposed changes.
		b. We would add language to the Directions for Use on when to give the first alternative question 1.	As with CACI No. 3066, the committee considered additional

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			language in the Directions for Use on alternative question 1 but does not recommend it.
		c. We agree with the other proposed revisions to the Directions for Use.	No further response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
3704. Existence of "Employee" Status Disputed (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Bruce Greenlee Attorney Richmond	1. Directions for Use: the deletion of the sentence from B&P 7451: This requires some explanation. Why was it deleted? The statute has not been repealed or amended. Was there a case that addressed the statute? If so, you need to cite that case and explain how it affected the statute.	Based on a user suggestion, the committee recommended deleting the sentence in the Directions for Use because it does not directly relate to vicarious liability for tort claims, which is the subject of CACI No. 3704. The committee agrees that the statute remains in effect.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Disagree. There is a different test for app drivers articulated in Bus. & Prof. Code, § 7451, which was recently upheld by the California Supreme Court in *Castellanos v. State of California*, 16 Cal. 5th 588 (2024). *See also* EDD website at: https://edd.ca.gov/en/payroll_taxes/employment-status/	The committee agrees that a different test exists for determining whether app drivers are independent contractors as set forth in Business and Professions Code section 7451.

Instruction(s)	Commenter	Comment	Committee Response
			However, the committee recommends deleting the content because it does not directly relate to vicarious liability for tort claims, which is the subject of CACI No. 3704.
3713. Nondelegable Duty (*Revise*)	Association of Southern California Defense Counsel by Stephen E. Norris Horvitz & Levy LLP Sacramento	We write on behalf of the Association of Southern California Defense Counsel (ASCDC) to comment on the Advisory Committee's proposed addition to the "Directions for Use" to CACI No. 3713 regarding nondelegable duties of care. We fully support the addition, as it accurately reflects the impact of the *Privette* doctrine on claims by injured contractors and their employees that a hirer owes a nondelegable duty of care. (See *Privette v. Superior Court* (1993) 5 Cal.4th 689.) ASCDC submits this comment as the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. Its members include over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's Civil defense bar. ASCDC appears often as amicus curiae in appellate matters of interest to its members, and has similarly weighed in on proposed legislation, rules changes, and jury instructions affecting matters of civil procedure and other aspects of ASCDC members' practices. CACI No. 3713 instructs that a plaintiff who is hired to perform a particular task may recover from the hirer for breach of a nondelegable duty of care "imposed on the hirer by statute, regulation, ordinance, contract, or common law." (See *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 455.) The Committee's proposed revision would add a use note following the instruction stating that the instruction "should	The committee acknowledges ASCDC's support for the proposed change.

Instruction(s)	Commenter	Comment	Committee Response
		generally not be given in a case brought against a hirer by an injured independent contractor or contractor's employee that is governed by the *Privette* doctrine." The Committee's proposed use note on the nondelegable duty issue aligns with and is supported by California Supreme Court and Court of Appeal decisions addressing the *Privette* doctrine, which gives rise to "a strong presumption under California law that a hirer of an independent contractor *delegates* to the contractor all responsibility for workplace safety." (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 37 (*Gonzalez*), emphasis added; see *id.* at p. 41 ["delegation as the key principle" supporting *Privette*]; accord, *Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 264.) Through this delegation, an independent contractor "receives authority to determine how the work is to be performed and assumes a corresponding responsibility to see that the work is performed safely." (*Tverberg v. Fillner Construction, Inc.* (2010) 49 Cal.4th 518, 528; accord, *SeaBright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th 590, 602.) Consistent with California Supreme Court holdings, "[w]hatever reasonable care would otherwise have demanded of the hirer, that demand lies now only with the contractor" and should a contract worker become injured after the delegation, "we presume that the contractor alone—and not the hirer—was responsible for any failure to take reasonable precautions." (*Sandoval*, at p. 271; see *Gonzalez*, at p. 41; *SeaBright*, at p. 602 [hirer delegates to contractor duty to comply with OSHA regulations that apply to work performed by contractor].) In *Acosta v. MAS Realty, LLC* (2023) 96 Cal.App.5th 635, 665, footnote 7, the Court of Appeal recognized that instructions imposing a nondelegable duty on hirers of contractors and their employees could in some cases conflict	

Instruction(s)	Commenter	Comment	Committee Response
		with the "strong presumption" under the *Privette* doctrine that the hirer *delegates* to the contractor "all responsibility for workplace safety." (*Gonzalez*, *supra*, 12 Cal.5th at p. 37.) As the court recognized in *Acosta*, it makes no sense to instruct the jury that the hirer has a "nondelegable" duty in cases where the hirer has delegated to the contractor all responsibility for workplace safety. (*Acosta*, at p. 665, fn. 7.) As reflected by the foregoing authorities, the proposed addition to the "Directions for Use" of CACI No. 3713 that the instruction should generally not be given in an action governed by the *Privette* doctrine properly reflects California law. The further clarification given by the proposed revision—that " 'the basic rule that a hirer is typically not liable for injuries sustained by an independent contractor or its workers while on the job' " because " 'the hirer presumptively delegates to the independent contractor the authority to determine the manner in which the work is to be performed' "—is likewise fully consistent with the *Privette* doctrine. For these reasons, we fully support the proposed addition to CACI No. 3713. We believe this revision will provide much-needed guidance to courts in determining appropriate instructions for nondelegable duty claims between hirers and contractors within the framework of the *Privette* doctrine. ASCDC therefore respectfully urges the Committee adopt the proposed addition to CACI No. 3713.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee	Agree.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
	Sacramento		
	Bruce Greenlee Attorney Richmond	1. Directions for Use: new material, parenthetical on *Gonzalez*: Pet peeve Change "even where" to "even if" as no location is involved.	The quoted material in the parenthetical is a direct quote from *Gonzalez*. The committee does not recommend the suggested change.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4013. Disqualification From Voting (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. The proposed revision to the instruction repeats the grounds for a finding of gravely disabled that are stated in CACI No. 4000, *Conservatorship—Essential Factual Elements*. We find it unnecessary and unhelpful to repeat those grounds in this instruction. We suggest the following revisions: "If you find that [*name of respondent*]~~, as a result of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism]~~, is gravely disabled, then you must also decide whether [he/she/*nonbinary pronoun*] should also be disqualified from voting. To disqualify [*name of respondent*] from voting, all 12 jurors must find, by clear and convincing evidence, that [he/she/*nonbinary pronoun*] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process."	The committee recommends deleting entirely the basis for finding a respondent gravely disabled, which is already addressed in other instructions in the Lanterman-Petris-Short Act series (CACI series 4000), from the first sentence. The proposed additions to the "as a result of" clause are therefore no longer recommended.
		b. We would revise the first sentence of the Directions for Use for greater clarity:	The committee agrees that a cross-reference to CACI No. 4000 in the Directions for Use

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Instruction(s)	Commenter	Comment	Committee Response
		"Give ~~T~~this instruction ~~is to be used in proceedings subject to Elections Code section 2208(b) and should be given~~ with CACI No. 4000, *Conservatorship—Essential Factual Elements*, if the petition prays for this relief."	would be helpful to users, and, therefore, recommends including it as suggested. The committee, however, declines to remove the citation to Election Code section 2208.
	Bruce Greenlee Attorney Richmond	1. DforU: Why are the four requirements from the statute being deleted? They are still in the statute. Seems that the jury would want to know about them even though the judge will find if one of them applies.	The committee's proposed change is in the Directions for Use. The proposed deletion is not part of CACI No. 4013's instructional content and is not given to a jury. The committee decided that the Directions for Use did not need to restate in full the four requirements set out in the statute when a citation to the Elections Code will suffice.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4306. Termination of Month-to-Month Tenancy—Essential Factual Elements (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).	The committee recommends correcting the typographical error.
	Bruce Greenlee Attorney Richmond	1. S&A new statute added: The definitions of "commercial real property" and "qualified commercial tenant" are in subdivision (k) of the statute (1) and (4), not (j).	The committee recommends correcting the typographical error.

Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Mei Tsang, President Newport Beach	At "Directions for Use," fourth item, third sentence, the proposal inserts the phrase "or commercial tenancies by qualified commercial tenants," into the sentence previously only referencing residential tenancies. As to residential tenancies then, this drafting made the phrase "of a year or more" appear to apply only to commercial tenancies by qualified commercial tenants. To make clear both such tenancies require a 60 day notice, it is suggested that following "residential tenancies," the phrase "of a year or more" be inserted so that the sentence reads as follows: For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more, 60 days' notice is generally required.	The committee recommends the clarifying language by adding "of a year or more" after the phrase residential tenancies.
		At "Sources and Authority," seventh item (as proposed), the proposal adds the definition for "Commercial Real Property" and for "Qualified Commercial Tenant," as each is set forth in the Civil Code. For these definitions, the proposal incorrectly cites section 1946.1(j). More accurately, "Commercial real property" is defined at section 1946.1(k)(1), and "Qualified commercial tenant" at section 1946.1(k)(4).	The committee recommends correcting the typographical error. The committee does not recommend adding the specific paragraph citations.
4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).	The committee recommends correcting the typographical error.
	Bruce Greenlee Attorney Richmond	Same comment as CACI No. 4306.	The committee recommends correcting the typographical error.

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Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Mei Tsang, President Newport Beach	At "Directions for Use," first item, third sentence, the proposal inserts the phrase "or commercial tenancies by qualified commercial tenants," into the sentence previously only referencing residential tenancies. As to residential tenancies then, this drafting made the phrase "of a year or more" appear to apply only to commercial tenancies by qualified commercial tenants. To make clear both such tenancies require a 60 day notice, it is suggested that following "residential tenancies," the phrase "of a year or more" be inserted so that the sentence reads as follows: For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more, 60 days' notice is generally required.	The committee recommends the clarifying language by adding "of a year or more" after the phrase residential tenancies.
		At "Sources and Authority," fifth item (as proposed), the proposal adds the definition for "Commercial Real Property" and for "Qualified Commercial Tenant," as each is set forth in the Civil Code. For these definitions, the proposal incorrectly cites section 1946.1(j). More accurately, "Commercial real property" is defined at section 1946.1(k)(1), and "Qualified commercial tenant" at section 1946.1(k)(4).	The committee recommends correcting the typographical error.
4409. Remedies for Misappropriation of Trade Secret (*Revise*)	California Employment Lawyers Association by Barbara Figari Cowan, Chair	We write to propose further clarifications to CACI 4409 "Remedies for Misappropriation of Trade Secret," and CACI No. 4401 "Misappropriation of Trade Secrets—Essential Factual Elements," which Courts are instructed to provide to jurors concurrently. *See* CACI 4409 "Directions for Use" (stating "Give this instruction with CACI No. 4401, *Misappropriation of Trade Secrets –Essential Factual Elements* . . . . ").	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

Instruction(s)	Commenter	Comment	Committee Response
		CACI 4409 should include a clarifying sentence making clear the current state of that law, that a misappropriation of trade secrets cannot be found if the disclosure was made solely to the party's counsel. For example, in employment cases, the California Supreme Court and Courts of Appeal specifically have held that an party's disclosure of information which may constitute trade secrets – *e.g.*, attorney-client privileged information obtained from their former employer in the course of their employment – may be disclosed to the employee's own attorney for the purpose of evaluating the employee's claims and/or determining whether such information constitutes admissible evidence. *Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106; *Fox Searchlight Pictures, Inc. v.Paladino* (2001) 89 Cal.App.4th 294, 314-15. Presently, however, neither CACI No. 4401 nor 4409 include this exception in the instructions or in the use notes. Even the new proposed CACI 4409 does not accurately reflect California law.	
		Accordingly, CACI No. 4409 should be amended to include a clarifying sentence at the end of the first paragraph such that it remains in accordance with current California law: **If [***name of plaintiff***] proves that [***name of defendant***] misappropriated [his/her/nonbinary pronoun/its] trade secret[s], then [***name of plaintiff***] is entitled to recover damages if the misappropriation caused [[***name of plaintiff***] to suffer an actual loss [or] [***name of defendant***] to be unjustly enriched], unless the disclosure was made solely to the party's counsel.**	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

Instruction(s)	Commenter	Comment	Committee Response
		[If [*name of defendant's***] disclosure was made solely to [his/her/nonbinary pronoun's] counsel, [**name of plaintiff**] is not entitled to recover any damages].** **[If [***name of defendant***]'s misappropriation did not cause [***name of plaintiff***] to suffer an actual loss [or] [***name of defendant***] to be unjustly enriched, [***name of plaintiff***] may still be entitled to a reasonable royalty for no longer than the period of time the use could have been prohibited. However, I will calculate the amount of any royalty.]**	
		CACI No. 4401 should likewise be amended to include this important distinction, consistent with current California law, in the third essential factual elements. Specifically, the plaintiff in an action for misappropriation for trade secrets must show that: **3. That [***name of defendant***] improperly [acquired/used/ [or] disclosed] the trade secret[s] [to a person other than the party's counsel].**	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.
		These amendments are necessary to ensure that the CACI instructions are consistent with the statutory text and current case law governing the misappropriation of trade secrets in all matters in which the claim may arise, and further, to make clear that a plaintiff is not entitled to damages in situations where disclosure of potentially protected information was made solely to counsel for the defendant. Any such disclosures emphatically do *not* constitute a misappropriation of trade secrets, and the jury instructions must be clear to ensure that laypersons are properly instructed regarding this important legal distinction. Should these amendments not be enacted, a jury could be improperly instructed that a plaintiff is entitled to a legal finding and/or damages for a disclosure solely to a	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

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Instruction(s)	Commenter	Comment	Committee Response
		defendant's attorney. That would constitute an instructional error and endanger the finality of any such verdict rendered pursuant to such an error. Moreover, the lack of such clarity unnecessarily encumbers judicial resources by leaving open for appeal matters that could have easily and been adequately addressed at the trial stage with proper instruction found within the CACI, versus relying upon a special instruction being properly crafted and/or issued by the trial court. We appreciate the Council's commitment to maintaining the integrity of California's legal system and urge careful reconsideration and rejection of these proposed changes.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 8547.8(c)) (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

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4602. Affirmative Defense—Same Decision (Gov. Code, § 8547.8(e)) (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
All instructions in CACI 25-01	Joel Cornejo San Jose	Agree with proposed changes.	No response required.
	Gladys Maria Dempsey Whitney Swan Quarter, North Carolina	Agree with proposed changes. When will preparation tell the people SB 1331. [*Verbatim comment; appears to be incomplete.]	No response required. To the extent the comment is about Sen. Bill 1331 (2023-2024 legislative session), which was not enacted, the committee has no plans to address the proposed legislation.
	Superior Court of Los Angeles County by Robert Oftring, Chief Communications and External Affairs Officer	Agree with proposed changes.	No response required.
	Superior Court of San Bernardino County by Nicole J. Owens, Court Operations Manager	Agree with proposed changes.	No response required.