



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-105

For business meeting on: May 22, 2021

Title

Unlawful Detainers: Forms to Further
Implement Senate Bill 91

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms UD-101, UD-105, and UD-120

Effective Date

May 24, 2021

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Date of Report

April 23, 2021

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends revisions of three unlawful detainer forms to further implement Senate Bill 91 (Stats. 2021, ch. 2), urgency legislation that became effective on Friday, January 29, 2021. The council previously revised and adopted these forms (a mandatory form with supplemental allegations, the answer form, and a form with newly required verifications) on an expedited basis, prior to being circulated for public comment, to ensure the unlawful detainer forms conformed to the provisions of the new law as soon as possible. The committee is now recommending further revisions based on comments received, so that the forms will more fully and correctly reflect the provisions of SB 91.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective May 24, 2021, revise the following forms:

- *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101);
- *Answer—Unlawful Detainer* (form UD-105); and

- *Verification by Landlord Regarding Rental Assistance—Unlawful Detainer* (form UD-120).

The proposed revised forms are attached at pages 10–19.

Relevant Previous Council Action

Assembly Bill 3088 (Stats. 2020; ch. 37), which includes the COVID-19 Tenant Relief Act of 2020, was enacted as urgency legislation on August 30, 2020, and put in place new provisions that went into effect immediately addressing unlawful detainer actions during the COVID-19 pandemic. (See Link A.) The bill provided, among other things, certain protections against the termination of residential tenancies for failure to pay rent due from March 1, 2020, through January 31, 2021.

In order for courts to determine whether judgments may issue on unlawful detainer cases in light of these new protections, and protections provided by federal law, plaintiffs need to provide information beyond the allegations contained in *Complaint—Unlawful Detainer* (form UD-100) or previously included in individually drafted complaints. For that reason, the council adopted *Plaintiff’s Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101), effective October 5, 2020, which includes allegations as to the various facts that a court needs to know to properly apply the provisions in AB 3088. The council also revised *Answer—Unlawful Detainer* (form UD-105) to aid defendants in responding to the allegations in new form UD-101 and raising defenses potentially available under AB 3088. Because there was not time to circulate the revised answer form prior to the October 5 effective date, the form was circulated for public comment after the council approved it, and was further revised in December 2020 in response to the comments received.

Because Senate Bill 91 (see Link B), along with recent federal action, extended the time frame for most tenant protections to June 30, 2021, and beyond; placed some new strictures on landlords (that raise corresponding new defenses for tenants); and requires additional verifications by plaintiffs in certain unlawful detainer actions, the council further revised forms UD-101 and UD-105 and adopted a new verification form (form UD-120), effective February 15, 2021.¹ Because those forms were approved and adopted without public comment, they were circulated for comments after the council action.

Analysis/Rationale

Required verifications

Among other changes to the law, SB 91 added new provisions to the Health and Safety Code, beginning at section 50897, establishing a new rental assistance program to administer federal rental assistance funds. Landlords of tenants from eligible households can apply for rental assistance in the form of payment to the landlord for 80 percent of the unpaid rental debt

¹ More recently, Assembly Bill 81 (Stats. 2021; ch. 5; see Link C) was enacted as “clean-up” legislation which makes mostly minor modifications to statutes enacted or amended by SB 91. That law did not make any substantive changes to the points addressed by the form revision or comments.

accumulated from April 1, 2020, through March 31, 2021. As a condition for receiving the funds, a landlord must waive the right to file an unlawful detainer action based on any remaining rental arrears for the time period for which the payment is made. (Health & Saf. Code, § 50897.1(d)(2).)

The law provides that “the court shall not enter a judgment in favor of the landlord” in any unlawful detainer action seeking possession of residential rental property based on nonpayment of rent or any other financial obligation under the lease without express verification that the landlord has not received rental assistance or other financial assistance, nor has any applications pending for such assistance, either corresponding to the amount demanded in the notice underlying the complaint, or for any amount accruing after the date of that notice. The statute breaks this out into four separate statements that must be verified. (Health & Saf. Code, § 50897.3(e)(2).)

This obligation is not limited by date of the tenancy or by date of the unpaid rent: it applies to judgments in all residential unlawful detainer actions for nonpayment of rent that are pending now or brought in the future. No judgment is to be entered in such cases without a landlord’s verification under penalty of perjury of all the statements set out in the new Health and Safety Code provision. While such cases are currently limited in light of the protections in AB 3088 and SB 91, they do exist. Tenants who cannot, or have not, provided a declaration of COVID-19–related financial distress can still be evicted for nonpayment of rent. And such cases will become more common as of July 2021.

The *Verification by Landlord Regarding Rental Assistance—Unlawful Detainer* (form UD-120) is a recitation of the verifications required by the statute before judgment can be entered in certain cases. It was adopted as a mandatory form, with instructions that it must be filed with requests for default judgment in actions based on nonpayment of residential rent. This is to ensure that a plaintiff can easily provide the required verification, and also ensure that a verification filed with the court meets the statutory requirements.² In order to ensure that plaintiffs know that this verification is required for certain unlawful detainer judgments, information about this requirement has been added to the instructions at the beginning of form UD-101.

In light of comments received on this issue, the committee is now recommending that an item for the verifications be added directly to form UD-101, as new item 12. As commenters pointed out, because the verified statements that the plaintiff has not received rental assistance and does not have a pending application for such assistance are now an essential element of plaintiff’s cause of action, with no judgment available unless the statements are made, due process requires that defendants receive notice of the statements as part of the complaint and have the opportunity to prepare a defense on this point. In addition to including the required statements in the allegations required with the complaint, an item has been added to the answer, allowing a defendant to assert

² In light of comments received, the recommended revisions include clarification to the instruction on this form, to note that it can be used in situations other than requests for entry of default, as appropriate.

that the plaintiff *has* received such rental assistance (and so may not obtain an unlawful detainer judgment), as new item 3m(8) in form UD-105.

Other revisions

The other primary change to unlawful detainer procedures under SB 91 was the extension of AB 3088’s “covered period”—the period in which landlords may not bring such actions based on nonpayment of rent due after March 1, 2020, if a declaration of financial distress has been provided by the tenant. The end date was moved from January 31, 2021, to June 30, 2021. (Code Civ. Proc., § 1179.02(a), and see also 1179.02(i) [transition time period]) The changes in the related time frames previously required several minor but significant revisions to both forms UD-101 and UD-105, primarily in the dates included in instructions for various items. This proposal does not recommend any further revisions regarding these changes.³

Senate Bill 91 also added some new strictures on landlords. New Civil Code section 1942.9 prohibits a landlord from charging late fees for COVID-19–related rental debt (i.e., money due between March 1, 2020, and June 30, 2021) to a tenant who has provided a declaration of COVID-19–related financial distress. In addition, the landlord cannot increase fees for services being charged to such a tenant, or charge for services previously provided for free. The checklist of defenses on the answer form approved in February include defenses for violations of those new provisions, violation of which would affect, at a minimum, the amount of money claimed in the unlawful detainer action (form UD-105 at item 3m(6).) As part of the revisions recommended here, that item has been reorganized and a reference to the documentation required of high-income tenants has been added.

New Code of Civil Procedure section 1179.04.5⁴ prohibits a landlord, for a tenancy that exists during the covered time period, from either applying the security deposit toward back rent or applying any rental payment made to COVID-19–related rental debt “other than the prospective month’s rent.” A defense based on this new provision was added to the answer form in February (form UD-105 at item 3r), but with an incorrect date limitation placed on it. The language of item 3r has been corrected and clarified in the recommended revisions.

This proposal would also further revise the answer form to reflect SB 91’s provision that assistance under the state rental assistance program is, for purposes of protection against housing discrimination provided under the California Fair Employment and Housing Act (FEHA), deemed a “source of income” under that law. For that reason, a cross-reference to FEHA has been added to the item for retaliatory eviction (on form UD-105 at item 3l) and a new item has

³ The dates in the items referencing federal tenant protections in forms UD-101 and UD-105 were omitted when the forms were previously revised to conform to SB 91. The dates were removed from those items (form UD-101 at item 4; form UD-105 at items 3p and q) in anticipation that the dates might change again. Recently, the Centers for Disease Control and Prevention (CDC) extended the protections of its *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (CDC Order) through June 30, 2021. (See Link D.) The committee is not recommending adding date limiters to the federal items at this time.

⁴ This section was enacted as *Civil Code* section 1179.04.5 in SB 91 but moved to the correct code in AB 81.

been added as to the checklist of defenses, asserting that a plaintiff has refused to accept funds from a third party (item 3s). An affirmative defense under FEHA based on a plaintiff's failure to provide a reasonable accommodation has also been added, to conform to recent regulation issued by the Department of Fair Employment and Housing. (See Cal. Code Regs., tit. 2, § 12176, subd. (c)(8)(A).) (See discussion in Comments section below.)

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. In AB 3088 and SB 91, the Legislature has enacted policies balancing protections for tenants—who are facing the loss of housing and potentially homelessness as a result of financial losses or expenditures related to the pandemic—with the rights of property owners who also have financial interests at stake. It is important that the forms reflect current law correctly and as completely as possible because the complexities of the provisions may place unrepresented parties at a disadvantage if clear forms are not provided for their use.

Comments

The new and revised forms were circulated for comments for a two-week special cycle following approval by the council. Comments were received from seven legal services and public advocacy groups (“Tenant Advocates”);⁵ the California Apartment Association; two state legislators, Senator Thomas Umberg and Assembly Member Mark Stone; one commissioner, from Superior Court of Santa Clara County;⁶ and the Civil Training and Analyst Group (“TAG Team”) of Superior Court of Orange County. Few indicated formal positions on the changes, but all agreed that the revisions made by the council were needed, and appreciated the speed with which they were approved, but most requested further revisions to the forms.

Most of the comments addressed the same issues. The principal comments and the committee's responses are summarized below.⁷

Issue 1: Verifications required by Health & Safety Code section 50897.3(e)

The Invitation to Comment included a request for specific comments on whether the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101. All the Tenant Advocates and the state legislators answered yes, the verification should be in the UD-101, so that the assertions are included in the material served on defendants and can be addressed by

⁵ The Tenant Advocates who provided comments are Bay Area Legal Aid, Bet Tzedek, Community Legal Aid SoCal, Eviction Defense Collaborative, Legal Services of Northern California, Public Advocates, Inc., and Western Center on Law & Poverty jointly with California Rural Legal Assistance Foundation.

⁶ Ms. Copeland provided only a general comment on the UD forms and a more specific one to be considered with pending revisions to small claims forms, not the ones in this Invitation to Comment. Those will be addressed at a later time, with the small claims form proposal

⁷ A chart setting out all the comments, organized by issue, and the committee's responses is at pages 20–60.

defendants in their answer or at trial. They pointed out—and the committee agreed—that checking a box to make the verification would not be any added burden to plaintiffs.

These commenters also suggested that—in addition to including the verification in the complaint—a further defense be added to the list of defenses in item 3 on form UD-105, asserting that the landlord had accepted rental assistance after issuance of the notice or accepted rental assistance that is not reflected in the debt noted on the complaint. The committee notes that, with the assertions included in the complaint, defendants can deny them in item 1 of the answer form. However, several similar provisions—which could be included as denials—have been added to section 3, Defenses and Objections, essentially to provide a checklist for defendants similar to the way that form UD-101 acts as a checklist for plaintiffs. For that reason, as noted above, the committee is recommending adding the defenses to form UD-105 as well as the new item 12 to form UD-101.

Two commenters, California Apartment Association (CAA) and the TAG Team of Orange County Superior Court requested that the form UD-101 include instructions as to when the verifications should be provided, with CAA asking if they could be filed with the complaint. Because the allegations have now been added to form UD-101, which must be filed with the complaint, this question has now been addressed.

Issue 2: Form UD-101—introductory language

Several of the Tenant Advocates suggested revising the introductory language on form UD-101, because it may give rise to an inference that the form is not required in cases filed after October 5, 2021. The committee recommends modifying the language in light of these comments.

Issue 3. Form UD-101—instructions to clerks

Most of the Tenant Advocates suggested that instructions be added to form UD-101 for the court clerk, telling the clerk to not issue summons, in two places: (1) if a landlord checks item 4(a), indicating that a tenant has invoked the temporary halt in evictions under federal law by providing the landlord with a declaration under the CDC order (Link D); and (2) if a landlord checks item 7(d)(1), indicating that a tenant has provided the landlord with a timely declaration of financial distress invoking the state law protections under AB 3088 and SB 91.

The committee declines to add such instruction in either item. First, a clerk's issuance of a summons in an unlawful detainer proceeding is a ministerial act, mandated by Code of Civil Procedure section 1166(e). Instructions on a form—if not expressly supported by statute or rule of court—would not be an appropriate basis for advising a clerk to refuse to carry out a mandated ministerial action. Second, neither the federal law nor the state law supports a blanket prohibition in issuing summons after the appropriate declaration has been served on the landlord. The CDC Order does not specifically prohibit courts from taking action; it instead prohibits landlords from evicting protected tenants who invoke the order. If a tenant invokes the protections of the CDC Order, and the landlord proceeds with the eviction, judicial determinations likely will be necessary to decide whether the CDC Order applies and, if so, to what extent. Nor does the state law prohibit all unlawful detainer actions from going forward if a tenant provides a declaration of COVID-19-related financial distress. Actions based on just

cause other than nonpayment of rent may proceed even if that declaration has been provided. (Code Civ. Proc., § 1179.03.5(a)(3).)

Issue 4. Form UD-101—service of informational notice

CAA suggested adding a limiting instruction to item 7a that the informational notice is not required if the only unpaid rental payments at issue in the action came due after February 1, 2021. The committee declines to accept this suggestion, because the language currently on the form covers CAA’s interpretation of the statute as well as other possible interpretations and the decision as to which is correct will ultimately have to be made by a court.

Issue 5. Form UD-105—item 3r

The Tenant Advocates and the state legislators all correctly pointed out that the form UD-105 approved in February is mistaken in limiting the defense in item 3r to the period before July 1, 2021. Code of Civil Procedure section 1179.04.5 provides that for the duration of any tenancy that existed from March 1, 2020, to June 30, 2021 (the “covered time period”) a landlord is not to apply a security deposit to cover COVID-19 rental debt (rent or other financial obligations that came due during the covered time period) or to apply rental payments to any COVID-19 rental date other than prospectively. In other words, during the entire tenancy, no matter how long it lasts going forward, the landlord cannot apply either the security deposit or future rental payments to rent due during the covered time period. The commenters are correct, and that item has been modified in the recommended revisions.

In addition, CAA pointed out that the usage of the terms rent and COVID-19 related rent (which includes more than rent) were not consistently used in this item. This proposal modifies this item to address this concern as well.

Issue 6. Form UD-105—landlord’s action re rental assistance

New Health & Safety Code section 50897.1(i) provides that, for the purposes of protections under the Fair Housing and Employment Act, assistance provided under the State Rental Assistance Program shall be deemed a “source of income” as that term is defined in Government Code section 12927(i) (i.e., under FEHA protections). Commenters looked at this from two different points of view.

- The Tenant Advocates all suggested that this provision means that a landlord’s *refusal to accept rental assistance* under the state program constitutes unlawful source of income discrimination under Government Code section 12955(a) and also unlawful retaliation under section 12955(f). The commenters suggested two revisions to the answer form to address this, each of which the committee agrees with, in part:
 - In item 3l, the current item relating to retaliation for failure to pay rent during COVID-19 covered period, the citation would be expanded to include reference to Government Code section 12955(f). (See item 3l on revised form UD-105—the committee has added a reference to the FEHA unlawful practices statute (Gov. Code, § 12955), although not to a specific subpart.)

- A new item would be added asserting that the landlord refused to accept payment offered toward financial obligations, citing Health and Safety Code section 50897.1(i). (See new item 3s on attached form UD-105—the committee has included cites to (1) the FEHA unlawful practices section (rather than to the new Health and Safety Code, because that new section does not say anything about refusing to accept payment); and (2) Civil Code section 1947.3, which precludes a landlord from refusing to accept payments from third parties.
- The state legislators looked at the new provision from a different point of view. They suggested that it means that the landlord should not discriminate after *accepting* payments from the rental assistance program, because to do so would be to discriminate based on source of income and be retaliatory. The committee declines to add an entirely new defense based on this interpretation, but has, as noted above, added references to FEHA to two other items.

Issue 7. Form UD-105—reasonable accommodations

The Tenant Advocates all raised a point they have raised before in commenting on revisions to the unlawful detainer forms over the past year—that the answer form should include an affirmative defense for plaintiff’s failure to provide a reasonable accommodation that was requested by a disabled tenant. This affirmative defense has been codified in regulations issued by the Department of Fair Employment and Housing, effective January 2020. The committee has not acted on these comments previously for two reasons: the focus of the proposals has been on COVID-19 related statutory provisions and the suggested defense may be raised within the general defense regarding discriminatory action (item 3f). The commenters pointed out, however, that, while not a defense based on COVID-19 pandemic issues, this defense is particularly important during this time, when evictions are more likely to occur and people with disabilities face myriad additional barriers to timely assertion of their rights.

The commenters also pointed out that this is a more specific affirmative defense than the general discrimination defense, and not one that parties may think of as falling under item 3f. The regulation expressly states, “An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action.” (Cal. Code Regs., tit. 2, § 12176, subd. (c)(8)(A)).⁸ This affirmative defense has been added to the answer form as new item 3t.

The Tenant Advocates also suggested, and this too is a repetition from earlier comments, that an “advisory” be added to the answer form that people with disabilities are entitled to reasonable accommodations and may request one at any point during the unlawful detainer process. the

⁸ Cal. Code Regs., tit. 2, § 12176 may be viewed at [https://govt.westlaw.com/calregs/Document/I26F34E35D0984BB3AE7C41C7CAF959A4?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/I26F34E35D0984BB3AE7C41C7CAF959A4?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)

committee concluded that such an advisory is not an appropriate part of an answer. Should information sheets be developed for unlawful detainers, as the committee hopes to do in the future, the suggestion will be considered at that time.

Issue 8. Form UD-105—request for jury

The Tenant Advocates also repeated a prior comment that the answer form should include a request for a jury trial. The committee declines this suggestion. No such item exists on the form complaint or on any other Judicial Council pleading form. This suggestion is outside the scope of this proposal and would be a significant change to the form. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial—Unlawful Detainer* (form UD-105), as explained on the California Courts Online Self-Help Center.

Issue 9. Form UD-105—other comments

Some additional minor comments were made regarding form UD-105 which do not fit into the categories above, which are on the comments chart at Issue 9.

Alternatives considered

In addition to the alternatives suggested by the commenters and discussed above, the committee considered not recommending any further revisions to these forms. However, the committee concluded that the revisions were needed so that the forms reflect current law correctly and completely.

Fiscal and Operational Impacts

Although SB 91 will have a significant impact on court operations, the revised forms should help to alleviate that impact, by making it less difficult for judicial officers to adjudicate unlawful detainer proceedings in compliance with the new law. Court staff, judicial officers, and self-help center staff will need to be made aware of the new and revised forms, and that older versions should not be rejected (see Cal. Rules of Court, rule 1.42).

Attachments and Links

1. Forms UD-101, UD-105, and UD-120, at pages 10–19.
2. Chart of comments, at pages 20-60.
3. Link A: Assembly Bill 3088 (Aug. 1, 2020),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3088
4. Link B: Senate Bill 91 (Jan. 29, 2021),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB91
5. Link C: Assembly Bill 81 (Feb. 23, 2021),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB81
6. Link D: Centers for Disease Control and Protection order (March 28, 2021),
<https://www.federalregister.gov/documents/2021/03/31/2021-06718/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT 04.15.21 NOT APPROVED BY COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER		CASE NUMBER:
For action filed (check one): <input type="checkbox"/> before October 5, 2020 <input type="checkbox"/> on October 5, 2020, or later		

All plaintiffs in unlawful detainer proceedings must file and serve this form. Filing this form complies with the requirement in Code of Civil Procedure section 1179.01.5(c).

- Serve this form with the summons.
- If a summons has already been served without this form, then serve it by mail or any other means of service authorized by law.
- If defendant has answered prior to service of this form, there is no requirement for defendant to respond to the supplemental allegations before trial.

Before obtaining a judgment in an unlawful detainer action for nonpayment of rent on a residential property, a plaintiff will be required to verify that no rental assistance or other financial compensation has been received for the amount in the notice demanding payment or accruing afterward, and no application is pending for such assistance. For a default judgment, plaintiff must use Verification by Landlord Regarding Rental Assistance (form UD-120) to make this verification.

1. PLAINTIFF (name each):

alleges causes of action in the complaint filed in this action against DEFENDANT (name each):

2. **Statutory cover sheet allegations** (Code Civ. Proc., § 1179.01.5(c))

- a. This action seeks possession of real property that is (check all that apply): Residential Commercial
(If "residential" is checked, complete items 3 and 4 and all remaining items that apply to this action. If only "commercial" is checked, no further items need to be completed except the signature and verification.)
- b. This action is based, in whole or in part, on an alleged default payment of rent or other charges. Yes No

3. **Tenants subject to COVID-19 Tenant Relief Act** (Code Civ. Proc., § 1179.02(h))

- a. (1) One or more defendants in this action is a natural person: Yes No
 (2) Identify any defendant not a natural person:
(If no is checked, then no further items need to be completed except the signature and verification.)
- b. (1) All defendants named in this action maintain occupancy as described in Civil Code section 1940(b). Yes No
 (2) Identify any defendant who does not:
(If yes is checked, then no further items need to be completed except the signature and verification.)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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4. Federal law allegations

- a. Defendant has has not provided a statement under penalty of perjury for the Centers for Disease Control and Prevention's order for *Temporary Halt in Evictions to Prevent Further Spread of COVID-19* (85 Federal Register 55292) or its extension. *(Note to plaintiff: Proceeding in violation of the federal order may result in civil or criminal penalties.)*
- b. This action does does not seek possession of a dwelling unit in property that has a federally backed multifamily mortgage for which forbearance has been granted under title 15 United States Code section 9057.
- (1) Date forbearance began:
- (2) Date forbearance ended:

5. **Unlawful detainer notice expired before March 1, 2020**

The unlawful detainer complaint in this action is based solely on a notice to quit, to pay or quit, or to perform covenants or quit, in which the time period specified in the notice expired before March 1, 2020. *(If this is the only basis for the action, no further items need to be completed except the signature and verification on page 4. (Code Civ. Proc., § 1179.03.5(a)(1).))*

6. **Rent or other financial obligations due between March 1, 2020, and August 31, 2020 (protected time period)**

The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due in the protected time period. *(Check all that apply.)*

- a. Defendant *(name each)*:

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. *(Provide information regarding service of this notice in item 8 below.)*

- b. One or more defendants was served with the notice in item 6a on a different date or in a different manner, which service is described in attachment 8c.
- c. Defendant *(name each)*:

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19–related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(b) and (d).

*(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))*

(If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)

- d. Response to notice *(check all that apply)*:

- (1) Defendant *(name each)*:

delivered a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- (2) Defendant *(name each)*:

did *not* deliver a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

7. **Rent or other financial obligations due between September 1, 2020, and June 30, 2021 (the transition time period)**

The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due during the transition time period.

- a. Defendant *(name each)*:

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. *(Provide information regarding service of this notice in item 8 below.)*

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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7. b. One or more defendants was served with the notice in item 7a on a different date or in a different manner, which service is described in attachment 8c.
- c. Defendant (*name each*):

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19-related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(c) and (d).

(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))

(If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)

- d. Response to notice (*check all that apply*):

- (1) Defendant (*name each*):

delivered a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- (2) Defendant (*name each*):

did *not* deliver a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- e. Rent due (*complete only if action filed after June 30, 2021*):

- (1) Rent in the amount of \$ _____ was due between September 1, 2020, and June 30, 2021.
- (2) Payment of \$ _____ for that period was received by June 30, 2021.

8. **Service of Code of Civil Procedure Section 1179.04 Notice From the State of California** (*check all that apply*)

- a. The notice identified in item 6a and 7a was served on the defendant named in those items as follows:

- (1) By personally handing a copy to defendant on (*date*):

- (2) By leaving a copy with (*name or description*):

a person of suitable age and discretion, on (*date*):

at defendant's

residence business AND mailing a copy to defendant at defendant's place of residence.

- (3) By posting a copy on the premises on (*date*):

AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (*date*):

(a) because defendant's residence and usual place of business cannot be ascertained OR

(b) because no person of suitable age or discretion can be found there.

- (4) By sending a copy by mail addressed to the defendant on (*date*):

- b. (*Name*):

was served on behalf of all defendants who signed a joint written rental agreement.

- c. Information about service of notice on the defendants alleged in items 6b and 7b is stated in Attachment 8c.

- d. Proof of service of the notice or notices in items 6a, 6b, 7a, and 7b is attached to this form and labeled Exhibit 1.

9. **High-income tenant.** The 15-day notice in item 6c or 7c above identified defendant as a high-income tenant and requested submission of documentation supporting the tenant's claim that tenant had suffered COVID-19–related financial distress. Plaintiff had proof before serving that notice that the tenant has an annual income that is at least 130 percent of the median income for the county the rental property is located in and not less than \$100,000. (Code Civ. Proc., § 1179.02.5.)

- a. The tenant did not deliver a declaration of COVID-19–related financial distress within the required time. (Code Civ. Proc., § 1179.03(f).)

- b. The tenant did not deliver documentation within the required time supporting that the tenant had suffered COVID-19–related financial distress as asserted in the declaration. (Code Civ. Proc., § 1179.02.5(c).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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10. **Just cause eviction.** (Only applicable if action is filed before July 1, 2021. Note: If the tenancy is subject to the Tenant Protection Act (including Civil Code section 1946.2), plaintiff must, if using form UD-100, complete item 8 on that form in addition to this item.)
- a. The tenancy identified in the unlawful detainer complaint in this action was terminated for at-fault just cause as defined in Civil Code section 1946.2(b)(1), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(i).)
- b. The tenancy identified in the unlawful detainer complaint in this action was terminated for no-fault just cause as defined in Civil Code section 1946.2(b)(2), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).) (Complete (1) or (2) below, only if applicable.)
- (1) The no-fault just cause is the intent to demolish or substantially remodel, which is is not necessary to comply with codes, statutes, or regulations relating to the habitability of the rental units. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).)
- (2) The tenancy identified in the complaint in this action was terminated because the owner of the property has entered into a contract with a buyer who intends to occupy the property and the property does does not meet all the requirements of Civil Code section 1946.2(e)(8). (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii)(II).)
- c. This action is based solely on the cause of termination checked in item 10a or b above, and is not for nonpayment of rent or other financial obligations. (If this item applies, plaintiff may not recover any rental debt due from the period between March 1, 2020, and June 30, 2021, as part of the damages in this action. (Code Civ. Proc., § 1179.03.5(a)(3)(B).))
11. **Rent or other financial obligations due after June 30, 2021.** (Only applicable if action is filed on or after July 1, 2021.) The only demand for rent or other financial obligations on which the unlawful detainer complaint in this action is based is a demand for payment of rent due after June 30, 2021.
12. **Statements regarding rental assistance** (Required in all actions based on nonpayment of rent or any other financial obligation. Plaintiff must answer all the questions in this item and, if later seeking a default judgment, will also need to file Verification Regarding Rental Assistance--Unlawful Detainer (form UD-120).)
- a. Has plaintiff received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? Yes No
- b. Has plaintiff received rental assistance or other financial compensation from any other source for rent accruing after the date of the notice underlying the complaint? Yes No
- c. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? Yes No
- d. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source for rent accruing after the date on the notice underlying the complaint? Yes No
13. Number of pages attached (specify):

Date: _____

(TYPE OR PRINT NAME)_____
(SIGNATURE OF PLAINTIFF OR ATTORNEY)**VERIFICATION**

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)_____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT 04/15/21 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
ANSWER—UNLAWFUL DETAINER		

1. Defendant (*all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs*):

answers the complaint as follows:

2. **DENIALS (Check ONLY ONE of the next two boxes.)**

a. **General Denial** (*Do not check this box if the complaint demands more than \$1,000.*)
 Defendant generally denies each statement of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101).

b. **Specific Denials** (*Check this box and complete (1) and (2) below if complaint demands more than \$1,000.*)
 Defendant admits that all of the statements of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:

(1) **Denial of Allegations in Complaint (Form UD-100 or Other Complaint for Unlawful Detainer)**

(a) Defendant claims the following statements of the complaint are false (*state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025*):

Explanation is on form MC-025, titled as Attachment 2b(1)(a).

(b) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (*state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025*):

Explanation is on form MC-025, titled as Attachment 2b(1)(b).

(2) **Denial of Allegations in Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer (form UD-101)**

(a) Defendant did not receive plaintiff's *Mandatory Cover Sheet and Supplemental Allegations* (form UD-101). (*If not checked, complete (b) and (c).*)

(b) Defendant claims the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*): Explanation is on form MC-025, titled as Attachment 2b(2)(b).

(c) Defendant has no information or belief that the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*):

Explanation is on form MC-025, titled as Attachment 2b(2)(c).

CASE NUMBER:

3. **DEFENSES AND OBJECTIONS** (NOTE: For each box checked, you must state brief facts to support it in item 3v (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at www.courts.ca.gov/selfhelp-eviction.htm.)
- a. (Nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. (Nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. (Nonpayment of rent only) On (date): _____ before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. Plaintiff waived, changed, or canceled the notice to quit.
- e. Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g. Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
(Also, briefly state in item 3v the facts showing violation of the ordinance.)
- h. Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. (Check all that apply and briefly state in item 3v the facts that support each.)
- (1) Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.
- (2) Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civ. Code, § 1946.2(c).
- (3) Plaintiff failed to comply with the relocation assistance requirements of Civ. Code, § 1946.2(d).
- (4) Plaintiff has raised the rent more than the amount allowed under Civ. Code, § 1947.12, and the only unpaid rent is the unauthorized amount.
- (5) Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.
- i. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- j. Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.)
- k. Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- l. Plaintiff's demand for possession of a residential property is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021, even though alleged to be based on other reasons. (Civ. Code, § 1942.5(d) or Gov. Code, § 12955.)
- m. Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021, and (check all that apply):
- (1) Plaintiff did not serve the general notice of rights under the COVID-19 Tenants Relief Act as required by Code of Civil Procedure section 1179.04.
- (2) Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)
- (3) Plaintiff did not provide an unsigned declaration of COVID-19-related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(d).)
- (4) Plaintiff did not provide an unsigned declaration of COVID-19-related financial distress in the language in which the landlord was required to provide a translation of the rental agreement. (Code Civ. Proc., § 1179.03(d).)
- (5) Plaintiff identified defendant as a "high-income tenant" in the 15-day notice, but plaintiff did not possess proof at the time the notice was served establishing that defendant met the definition of high-income tenant. (Code Civ. Proc., § 1179.02.5(b).)

CASE NUMBER:

- m. (6) Defendant delivered to plaintiff one or more declarations of COVID-19–related financial distress and, if required as a "high-income tenant," documentation in support. (Code Civ. Proc., §§ 1179.03(f) and 1179.02.5.)
(Describe when and how delivered and check all other items below that apply):
- (a) Plaintiff's demand for payment includes late fees on rent or other financial obligations due between March 1, 2020, and June 30, 2021.
- (b) Plaintiff's demand for payment includes fees for services that were increased or not previously charged.
- (c) (For cases filed after June 30, 2021) Defendant, on or before June 30, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and June 30, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a). (Code Civ. Proc., § 1179.03(g)(2).)
- (7) Defendant is currently filing or has already filed a declaration of COVID-19–related financial distress with the court. (Code Civ. Proc., § 1179.03(h).)
- (8) Rental Assistance (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)) (check all that apply):
- (a) Plaintiff received or has applied for rental assistance from the State Rental Assistance Program or financial compensation from some other source relating to the amount claimed in the notice to pay rent or quit.
- (b) Plaintiff received or has applied for rental assistance from the State Rental Assistance Program for rent accruing since the notice to pay rent or quit.
- n. (For cases filed before July 1, 2021) Plaintiff's demand for possession of a residential tenancy is based on a reason other than nonpayment of rent or other financial obligations, and plaintiff lacks just cause for termination of the tenancy, as defined in Civil Code section 1946.2(b) or Code of Civil Procedure section 1179.03.5(a)(3)(A).
- o. Plaintiff violated the COVID-19 Tenant Relief Act (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way (briefly state facts describing this in item 3v).
- p. Defendant provided plaintiff with a declaration under penalty of perjury for the Centers for Disease Control and Prevention's temporary halt in evictions to prevent further spread of COVID-19 (85 Federal Register 55292 at 55297), and plaintiff's reason for termination of the tenancy is one that the temporary halt in evictions applies to. (Describe when and how provided):
- q. Plaintiff violated the federal CARES Act, because the property is covered by that act and (check all that apply):
- (1) The federally backed mortgage on the property was in forbearance when plaintiff brought the action. (15 U.S.C. § 9057.)
- (2) The plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).)
- r. Plaintiff improperly applied payments made by defendant in a tenancy that was in existence between March 1, 2020, and June 30, 2021 (Code Civ. Proc., § 1179.04.5), as follows (check all that apply):
- (1) Plaintiff applied a security deposit to rent, or other financial obligations due, without tenant's written agreement.
- (2) Plaintiff applied a monthly rental payment to rent or other financial obligations that were due between March 1, 2020, and June 30, 2021, other than to the prospective month's rent, without tenant's written agreement.

CASE NUMBER:

- s. Plaintiff refused to accept payment from a third party for rent due. (Civ. Code, § 1947.3; Gov. Code, § 12955.)
- t. Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (Cal. Code Regs. tit. 2, § 12176 (c).)
- u. Other defenses and objections are stated in item 3v.
- v. (Provide facts for each item checked above, either below or, if more room needed, on form MC-025):
 Description of facts or defenses are on form MC-025, titled as Attachment 3v.

4. OTHER STATEMENTS

- a. Defendant vacated the premises on (date):
- b. The fair rental value of the premises alleged in the complaint is excessive (explain below or, if more room needed, on form MC-025):
 Explanation is on form MC-025, titled as Attachment 4b.
- c. Other (specify below or, if more room needed, on form MC-025):
 Other statements are on form MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c. reasonable attorney fees.
- d. that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e. Other (specify below or on form MC-025):
 All other requests are stated on form MC-025, titled as Attachment 5e.

CASE NUMBER: _____

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

7. (Must be completed in all cases.) An **unlawful detainer assistant** did not did for compensation give advice or assistance with this form. (If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name: _____ b. Telephone number: _____
- c. Street address, city, and zip code: _____
- d. County of registration: _____ e. Registration number: _____ f. Expiration date: _____

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless defendant's attorney signs.)

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT OR ATTORNEY)
	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">04/15/2021</h2> <h1 style="margin: 0;">NOT APPROVED BY JUDICIAL COUNCIL</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
VERIFICATION BY LANDLORD REGARDING RENTAL ASSISTANCE—UNLAWFUL DETAINER	CASE NUMBER:

This form must be filed by the plaintiff with any request for default judgment in any unlawful detainer action seeking possession of residential property based on nonpayment of rent or any other financial obligation under a lease. It may also be used at other times as appropriate or when requested by a judicial officer.

1. The landlord of the property at issue in this case is (name):
2. All of the following statements are true:
 - a. Landlord has not received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint in this action.
 - b. Landlord has not received rental assistance or other financial compensation from any other source for rent accruing after the date of the notice underlying the complaint in this action.
 - c. Landlord does not have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint in this action.
 - d. Landlord does not have any pending application for rental assistance or other financial compensation from any other sources for rent accruing after the date of the notice underlying the complaint in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

 (TYPE OR PRINT NAME)

▶

 (SIGNATURE)

 (TITLE-- provide if signing on behalf of corporation or other business entity)

**VERIFICATION BY LANDLORD REGARDING
 RENTAL ASSISTANCE—UNLAWFUL DETAINER**

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	Bay Area Legal Aid by Lauren DeMartini Housing Regional Counsel	NI	<p>We write in response to the Judicial Council’s <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i>. We appreciate the Judicial Council’s diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>Bay Area Legal Aid (“BayLegal”) is a regional non-profit law firm providing free civil legal services to eligible low-income individuals and families throughout the Bay Area. Each year, we serve approximately 10,000 low-income individuals in seven of the nine Bay Area counties. In the past year, BayLegal served 4,021 individuals and households who are unstably housed, homeless, or at-risk of homelessness. We provide full-scope legal representation for tenants as well as advice and counsel for pro per tenants.</p> <p>Below we address the Council’s specific inquiry and offer additional suggestions.</p> <p>[See comments on specific provisions below.]</p> <p>Conclusion While intended to protect tenants, the complexities of the</p>	See responses to comments on specific provisions below

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

			<p>new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments.</p>	
2.	<p>Bet Tzedek by Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles</p>	NI	<p>We write in response to the Judicial Council’s <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i>. We appreciate the Judicial Council’s diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>[See comments on specific provisions below.]</p> <p>Conclusion While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments.</p>	<p>See responses to comments on specific provisions below.</p>

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

3.	California Apartment Association by Heidi Palutke Education, Policy and Compliance Counsel Sacramento	NI	<p>The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing more than 50,000 single family and apartment owners and operators who are responsible for nearly two million affordable and market rate rental housing units throughout California. CAA’s mission is to promote fairness and equality in the rental of residential housing and to promote and aid in the availability of high-quality rental housing in California. CAA represents its members in legislative, regulatory, judicial, and other state and local forums.</p> <p>As a preliminary matter, CAA thanks the Judicial Council and staff for their work on these forms to implement SB 91, particularly given the short timeframes for doing so.</p> <p>CAA offers the following comments on the proposed revisions to forms UD-101 and UD-105 and the adoption of new form UD-120.</p> <p>[See comments on specific provisions below.]</p>	See responses to comments on specific provisions below.
4.	California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	NI	<p>Before we offer you our response to your Invitation to Comment on the proposed changes to the unlawful detainer forms, we would like to express our appreciation to you and your staff for your efforts in this area. We are cognizant that, when the Legislature alters the law, the Judicial Council often has to make a series of changes to the corresponding forms as a result. Of late, the Legislature has been making a lot of changes to the eviction statutes. Some of these changes have been complex and many of them have become applicable within days or even hours of passage. That puts a tremendous burden on the Judicial Council staff to update the forms rapidly, accurately, succinctly, and in a manner that is at once comprehensive and user-friendly. Even as we</p>	See responses to comments on specific provisions below.

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

			<p>propose some changes at the margins, we want to emphasize our overall appreciation for how well your staff has responded to this challenge under difficult circumstances.</p> <p>We have three main comments on the proposed forms implementing SB 91 (Committee on Budget and Fiscal Review, Chapter 2, Statutes of 2021).</p> <p>[See comments on specific provisions below.]</p>	
5.	Community Legal Aid SoCal by Kate Marr Executive Director Santa Ana	NI	<p>We write in response to the Judicial Council’s <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i>. We appreciate the Judicial Council’s diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>Below we address the Council’s specific inquiry and offer additional suggestions.</p> <p>[See comments on specific provisions below.]</p>	See responses to comments on specific provisions below.
6.	Christine Copeland Commissioner Superior Court of Santa Clara	A	<p>The new UD complaint and Answer are great. Learning AB 3088, and now SB 91, has been challenging, but the forms you propose distill dates, procedures, etc. so are very helpful. I think they are as simple as they can be for the litigants trying to fill them out, given how many legal changes, dates (and transition periods) and procedures have been enacted in the UD world since Covid.</p>	The committee appreciates the comments. The comments on the Small Claims form will be considered in the proposal regarding those forms.

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Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

			<p>I can't speak to whether the revisions will save us money. I also can't speak to what these revisions will mean for staff training, case management systems, etc. I think the burden, appropriately so, is on the judicial officer hearing the case, or reviewing the default judgment request, to make sure landlords have jumped through all the hoops.</p> <p>I look forward to seeing the proposed changes for the small claims claim form (SC-100) to advertise the lifting of jurisdictional limits for landlords seeking more than \$10,000 or \$5000 (corps or LLCs). Since you'll have to change the SC-100 to accommodate that change effective 8/1/21, I ask that you consider an instruction somewhere on the form that a landlord should look at their lease and make sure all landlords and all tenants are listed as parties. This is because a large percentage of the time, we learn at the first small claims hearing that necessary parties are missing, and we have to order that the claim be amended to capture all parties. And once you amend a claim, then the clerk has to set a new court date, file more forms, the plaintiff/landlord has to then serve the amended claim, etc. and so the Court's workload is often double what it needs to be.</p>	
7.	Eviction Defense Collaborative by Ora S. Prochovnick Director of Litigation and Policy San Francisco	NI	We write in response to the Judicial Council's <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i> . We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. The Eviction Defense Collaborative is the lead agency under San Francisco's Tenants Right to Counsel law and therefore is uniquely positioned to address this matter. These updated forms are	See responses to comments on specific provisions below.

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

			<p>particularly critical as it is anticipated that so many tenants will be facing eviction during this public health crisis, and in areas outside of San Francisco with its right to counsel program they will be primarily self-represented. It is therefore essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>[See comments on specific provisions below.]</p> <p>Conclusion While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms as accessible and comprehensive as possible in this challenging situation. Thank you for your work and thank you for considering these comments.</p>	
8.	Legal Services of Northern California by Olive Ehlinger Managing Attorney Vallejo	NI	<p>Legal Services of Northern California (LSNC) writes to comment on the Judicial Council’s proposed updates to Forms UD-101 and UD-105 to conform with SB 91. LSNC is the federally-funded civil legal aid organization for most of the counties in California north of the San Francisco Bay. In 2019, LSNC provided legal advice, advocacy, and representation for over 15,000 low-income Californians. Eviction defense is the single greatest need of LSNC’s clients, and the number of low-income Californians that face eviction far outweighs the ability of all legal services programs to provide even the briefest counsel and advice. Therefore, simple forms that allow an unrepresented litigant to accurately and thoroughly raise their defenses in the</p>	See responses to comments on specific provisions below.

SP21-02

Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

			<p>extremely short unlawful detainer answer period are necessary to ensure elementary access to the courts. We appreciate the Judicial Council’s efforts in creating such forms from the extremely complex provisions of the COVID Tenant Relief Act. We offer to the following comments to ensure the UD answer forms allow low-income and unrepresented Californians to assert their defenses.</p> <p>[See comments on specific provisions below.]</p>	
9.	<p>Public Advocates Inc. by Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco</p>	NI	<p>Public Advocates Inc. writes in response to the Judicial Council’s <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i>. We appreciate the Judicial Council’s diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>[See comments on specific provisions below.]</p> <p>Conclusion While intended to protect tenants, the complexities of the new COVID-19 laws can still place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work and thank you for considering</p>	See responses to comments on specific provisions below.

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			these comments.	
10.	Superior Court of Orange County by Civil Training and Analyst Group	NI	<p>Would the proposal provide cost savings? If so, please quantify No.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Because court staff will not be looking at the content of the form but instead, only verifying that the form has been filed, implementation requirements would be minimal. An email advisement and change in procedure should be sufficient to put staff on notice that a new form is required prior to entering judgment on these cases. A Program Coordinator Specialist should be able to make the change in procedure and include the change in our weekly procedure blast in about one hour. A follow up Q & A session could be provided in less than an hour to answer any questions that may arise from staff or supervisors. New UD-120 form will need to be configured and tested in the case management system and added to the Civil Add Filing Guide. The eFiling vendors will need to be notified of new filing and configure their systems accordingly. Self-Help will also need the information.</p> <p>[See comments on specific provisions below.]</p>	<p>The committee appreciates the responses to the questions regarding court implementation.</p> <p>See responses to additional comments on specific provisions below.</p>
11.	Western Center on Law &	NI	Western Center on Law & Poverty and California Rural	See responses to comments on specific

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<p>Poverty by Madeline Howard</p> <p>Jointly with:</p> <p>California Rural Legal Assistance Foundation by Brian Augusta</p>	<p>Legal Assistance Foundation write in response to the Judicial Council’s <i>Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91</i>. We appreciate your diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses.</p> <p>[See comments on specific provisions below.]</p> <p>Conclusion While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments. If you have any questions, please feel free to contact me at mhoward@wclp.org.</p>	<p>provisions below.</p>
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All comments are verbatim unless indicated by an asterisk (*).

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	Comment	Committee Response
<p>Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel</p>	<p>The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.</p> <p>Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt.</p> <p>Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.</p>	<p>In light of this and other comments on this point, form UD-101 has been modified to include an item for the verified statements (item 12) and form UD-105 has been modified to include defenses on this point (item 3.m(8)).</p> <p>The committee notes that a general denial is only appropriate in UD actions in which the back rent claimed is \$1000 or less.</p>
<p>Bet Tzedek by Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles</p>	<p>The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.</p> <p>Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this</p>	<p>See response to Bay Area Legal Aid Comment on this issue.</p>

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ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	Comment	Committee Response
	<p>information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt.</p> <p>Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.</p>	
<p>California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento</p>	<p>Instructional Paragraph About Verification Requirement This paragraph provides notice that a plaintiff will be required to verify certain facts regarding applications for and receipt of rental assistance. It then directs the plaintiff to use form UD-120 to make that verification when the plaintiff is seeking a default judgment. CAA recommends that the Judicial Council clarify two matters in the instruction paragraph:</p> <p>(1) At what point in time, “before obtaining a judgment” should this verification be filed? – i.e., is it best filed as late as possible? Can it be filed with the complaint?</p> <p>(2) If the plaintiff landlord is not seeking a default judgment, can the landlord still use form UD-120?</p> <p><u>UD-120 Verification by Landlord Regarding Rental Assistance</u> CAA’s only comment on this form is the same comment made with respect</p>	<p>The law is not clear on this point, so it will be up to individual courts and judicial officers. Because the required verifications have now been added to form UD-101, which must be filed with the complaint, the issue of whether they can be filed with the complaint has been addressed.</p> <p>The instructions on form UD-120 have been clarified to provide that it may be used in other situations as well, including when requested by a judicial officer.</p> <p>As noted, the verifications have now been added to the complaint and the instructions</p>

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	to the instructional paragraph on form UD-101. This form could also use additional instructions that clarify when the form must be filed and the circumstances in which it can be used. Including this information in form UD-120, will help plaintiffs and will hopefully reduce the number of questions directed to court staff and will increase the filing of the proper verifications.	on form UD-120 have been clarified.
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	<p>[I]n your Invitation to Comment, you specifically requested feedback about whether the landlord verifications required by Health and Safety Code Section 50897.3(e)(2) should be incorporated into the complaint form or, as currently proposed, those verifications should appear as part of a separate form that landlords must file in order to obtain a default judgment. For the reasons detailed below, we believe that the verifications should be incorporated into the complaint form. Just as importantly, we believe that the Answer form should be revised to enable defendant tenants to respond directly to those verifications.</p> <p>The verifications required pursuant to SB 91 oblige the landlord to state whether the landlord has received money from the rental assistance program, or has an application pending to receive money from it. More specifically, the landlord must verify whether that money corresponds to rent demanded in the notice pursuant to Code of Civil Procedure Section 1161(2) or rent accruing after that notice expired.</p> <p>Discouraging fraud is one purpose behind this verification requirement. Without it, unscrupulous landlords could apply for and obtain money from the rental assistance program while simultaneously requesting a court judgment for that same money as part of an unlawful detainer suit, and there would be no way for the court to know this fraudulent activity was happening.</p>	See response to Bay Area Legal Aid Comment on this issue.

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	<p>That is why SB 91 requires a similar verification in civil actions to recover unpaid rent outside of the unlawful detainer process. (Health and Saf. Code § 50897.3(e)(1).) The idea is to prevent double-dipping.</p> <p>In the unlawful detainer context, however, the landlord verifications also serve another purpose: they help the court determine if the landlord has invalidated the notice or possibly acquiesced to the tenant’s ongoing possession of the property by accepting or applying for rental assistance money. It is a well-established principle of landlord/tenant law that, if a landlord accepts rental payments at any time after issuing a formal notice pursuant to Code of Civil Procedure Section 1161(2), then the landlord can no longer obtain a judgment for possession based on that notice. That is because, if the payment corresponds to all or any part of the amount demanded in the notice, then the notice will thereafter overstate the amount of rent due and owing, rendering it void. (<i>Levitz Furniture Co. v. Wingtip Communications</i> (2001) 86 Cal.App.4th 1035, 1038: “A notice that seeks rent in excess of the amount due is invalid and will not support an unlawful detainer.”) Similarly, a landlord who accepts rental payments corresponding to the time after the notice has expired, has, by virtue of that acceptance, acquiesced to the tenant’s ongoing possession of the property. (<i>Kern Sunset Oil Co. v. Good Roads Oil Co.</i> (1931) 214 Cal. 435, 441, quoting Ruling Case Law, 16 R. C. L., p. 1132: “[T]he acceptance by a landlord of the rents, with full knowledge of a breach in the conditions of the lease, and of all of the circumstances, is an affirmation by him that the contract of lease is still in force, and he is thereby estopped from setting up a breach in any of the conditions of the lease, and demanding a forfeiture thereof.”) While there is caselaw indicating that a landlord can accept housing assistance from the Section 8 program without reinstating the lease, that decision was based on the conclusion that a Section 8 housing subsidy is not rent. (<i>Savett v. Davis</i> (1994) 29 Cal.App.4th Supp. 13.) In contrast, the rental assistance program established by SB 91 will be paying</p>	

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	<p>the actual rent on the tenant’s behalf. Seeking or accepting a payment from the rental assistance program would therefore seem to indicate “an affirmation that the lease is still in force.”</p> <p>The point is that the landlord verifications not only inform the court whether the landlord has complied with technical requirements of Health and Safety Code 50897(e)(2); they also provide the court with substantive assurance that the landlord has not waived the notice or acquiesced to the tenant’s ongoing possession of the property by seeking rental assistance money at the same time the landlord is trying to evict the tenant. These are factual claims and, as such, the tenant defendant should have the opportunity to put them at issue by denying them in the Answer. For that to happen, the verifications need to be contained within the Complaint. Just as crucially, the revised Answer form should make it simple and straightforward for defendants to deny the factual claims made in the verification.</p>	
<p>Community Legal Aid SoCal Kate Marr Executive Director Santa Ana</p>	<p>The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.</p> <p>Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord</p>	<p>See response to Bay Area Legal Aid Comment on this issue.</p>

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	<p>has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.</p> <p>This declaration is an essential element to a Plaintiff’s cause of action, and basic due process requires that defendants receive notice of the verification as part of the complaint. It is settled law that all the facts that are material to the cause of action—i.e., the facts that make a difference to the outcome of the case—must be alleged. Likewise, the Complaint must provide notice of the issues sufficient to enable preparation of a defense. However, if the certification is only required when the court enters judgment, it deprives defendants of vital information that is necessary to defend their case. Without requiring the certification in the UD-101, pro per defendants may not know whether the landlord has requested rental assistance and would have to request discovery to obtain this basic information. By only requiring the certification at judgment, the information is given to defendants when it is likely too late for them to dispute it. Additionally, the UD-120 form incorrectly implies that it is only required for default judgments, when it should really be required in all judgments. The best way to address these concerns is to make the declaration part of the UD-101 form.</p>	
<p>Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco</p>	<p>The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.</p> <p>Tenants should be served with the document containing the declaration regarding rental assistance under Health and Safety Code section 50897.3 and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the</p>	<p>See response to Bay Area Legal Aid Comment on this issue.</p>

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	<p>required allegations regarding rental assistance and does not state that it must be served on tenants. This language should be included on the UD-101 so that it will be served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations if appropriate by checking a box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.</p>	
<p>Legal Services of Northern California By Olive Ehlinger Managing Attorney Vallejo</p>	<p>Unlawful Detainer defendants should be provided the opportunity to dispute whether the Plaintiff has complied with Health and Safety Code section 50897.3(e)(2).</p> <p>Our colleagues at the Western Center on Law and Poverty, who submit a concurrent comment, assert that Unlawful Detainer defendants must have the opportunity to dispute a plaintiff’s allegation that the plaintiff has complied with section 50897.3(e)(2) and is not attempting to collect alleged rental debt that a rental assistance program has paid to the plaintiff. Western Center advises that the Judicial Council should require all plaintiffs to certify compliance with section 50897.3(e)(2) in the Mandatory Coversheet, UD-101. LSNC concurs with Western Center’s comment.”</p> <p>However, the Judicial Council should also include a Plaintiff’s failure to comply with section 50897.3(e)(2) as an additional item in Paragraph 3 of UD-105 defense. Compliance with section 50897.3(e)(2) is a part of the plaintiff’s prima facie case for unlawful detainer under the COVID Tenant Relief Act and unlawful detainer defendants do not bear the burden to present evidence that a plaintiff demands rent which a rental assistance</p>	<p>See response to Bay Area Legal Aid Comment on this issue.</p>

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Commenter	Comment	Committee Response
	agency has already paid to the plaintiff (as discussed in the prior section). However, to the extent defenses and objections will continue to appear together in Paragraph 3 of UD-105, any opportunity to raise this defense is necessary to afford unrepresented litigants fair process.	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101. Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.	See response to Bay Area Legal Aid Comment on this issue.
Superior Court of Orange County by Civil Training and Analyst Group	Pursuant to Health and Safety Code 50897.3(e)(2), the verification (form UD-120) is required on “any unlawful detainer action seeking possession of residential rental property based on nonpayment of rent or any other financial obligation under the lease, the court shall not enter a judgment in favor of the landlord unless the landlord verifies all of the following under penalty of	See response to Bay Area Legal Aid Comment on this issue.

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	<p>perjury” Currently, form UD-120 states under the header, “This form must be filed by the plaintiff with any request for default judgment in any unlawful detainer action seeking possession of residential property based on nonpayment of rent or any other financial obligation under a lease” (emphasis added).</p> <p>Theoretically, Plaintiff could file an action seeking possession of residential rental property based on nonpayment of rent, defendant could file an answer and a court trial would be held. If the Court wanted to confirm that Plaintiff complied with the requirement of Health and Safety Code 50897.3(e)(2), plaintiff’s counsel could argue that the Judicial Council explicitly states on the UD-120 form that this verification is only needed on a default judgment. Recommendation: Revise UD-120 by removing the language “any request for default judgment.” This would require the plaintiff seeking possession on a residential property based on nonpayment of rent or any other financial obligation under a lease to file form UD-120, regardless of whether they are seeking a default judgment, in accordance with Health and Safety Code 50897.3(e)(2). Or, revise the language to clarify this point by adding language such as “...with any request for default judgment, or request for trial.”</p> <p>Should the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101?</p> <p>No, the verifications should not be included in for UD-101. I agree with the committee that the information added to form UD-101 is helpful and appropriate as is and the listed verification should remain in the new UD-120 form.</p>	<p>The committee is proposing that the verifications be included in form UD-101, filed with the complaint. In addition, the instructions on form UD-120 would be clarified to indicate that in addition to being required with a default request, it may be used at other times also. The committee notes that, if a trial is held, the plaintiff could provide the verifications verbally.</p> <p>After further consideration, the committee disagrees and now recommends that the verifications be included on form UD-101, to ensure that the defendant has notice of the assertions being made by the plaintiff.</p>
Western Center on Law & Poverty by Madeline Howard	<p>Should the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101?</p> <p>Yes. It is extremely important that tenants be served with the declaration</p>	See response to Bay Area Legal Aid Comment on this issue.

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Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	<p>regarding rental assistance under Health and Safety Code section 50897.3 at the outset of the action and afforded an adequate opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be incorporated into the documents served on the tenant at the commencement of the action.</p> <p>The factual issues set out in this verification are not only required by SB 91, they could also form the basis for multiple defenses to the unlawful detainer action. For example, if a landlord accepted rental assistance after issuing the notice to pay rent or quit, it would constitute waiver of the notice. If the landlord was offered rental assistance and refused it, it would constitute source of income discrimination. As such it is critical that tenants receive notice of the landlord's allegations and have opportunity to contest them. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Source of income discrimination is discussed below.</p>	

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ISSUE 2: Form UD-101 – Introductory Language		
Commenter	Comment	Committee Response
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	The language at the top of the UD-101 cover sheet is confusing because it refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should be served with all summons and too much time has passed for there still to be pending cases where that did not occur.	The committee has modified the introductory language in light of these comments.
Public Advocates, Inc. By Shajuti Hossain, Law	The language at the top of the UD-101 cover sheet is incorrect because it still refers to cases filed before October 5, 2020. This language should	The committee has modified the introductory language in light of these comments.

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ISSUE 2: Form UD-101 – Introductory Language		
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Fellow and Richard Marcantonio, Managing Attorney San Francisco	make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons is already served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.

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ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	Comment	Committee Response
<p>Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel</p>	<p>The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.</p> <p>Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.</p>	<p>The committee has considered but declines these suggestions. Code of Civil Procedure section 1166(e) makes issuance of a summons in a UD action a ministerial act, to be completed upon the filing of a UD complaint. Neither law expressly or implicitly changes that.</p> <p>There is no provision in the CDC order that expressly prohibits state courts from acting after service of a CDC declaration on a landlord.</p> <p>There is nothing in the state law that prohibits a court from issuing a summons after a declaration of financial distress has been served on a landlord. AB 3088 and SB 91 do not amend section 1166 (although other general provisions of UD procedures—such as masking—were amended to address the new provisions). Moreover, even if this item is checked, a plaintiff may proceed to trial and judgment if seeking a just cause eviction under section 1179.03.5(a)(3).</p>
<p>Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles</p>	<p>The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.</p> <p>Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.</p>	<p>See response to Bay Area Legal Aid on this issue.</p>

SP21-02**Unlawful Detainers: Forms to Further Implement Senate Bill 91** (Revise forms UD-101, UD-105, and UD-120)

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

ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	Comment	Committee Response
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	<p>The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.</p> <p>Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.</p>	See response to Bay Area Legal Aid on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	<p>The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.</p> <p>Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.</p>	See response to Bay Area Legal Aid on this issue.
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	<p>The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.</p> <p>Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.</p>	See response to Bay Area Legal Aid on this issue.
Western Center on Law & Poverty by Madeline Howard	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.	See response to Bay Area Legal Aid on this issue.

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Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	Comment	Committee Response
Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91’s protections are extended.	

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Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

ISSUE 4: Form UD-101 – service of informational notice		
Commenter	Comment	Committee Response
<p>California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento</p>	<p>Form UD-101: Plaintiff’s Mandatory Cover Sheet and Supplemental Allegations - Unlawful Detainer CAA agrees that the revisions proposed for this form are appropriate. However, CAA recommends two additional changes to make the form easier for landlords to use. [The other suggestion is set out in Issue 1, above.]</p> <p>Section 7 (a) Service of Informational Notice: This section allows the plaintiff to make an allegation with respect to service of the informational “Notice from the State of California” originally required by AB 3088 and required by the updated informational notice under SB 91. SB 91 requires the updated notice to be served <u>on or before</u> February 28, 2020, only on those tenants who as of February 1, 2021, have not paid one or more rental payments that came due during the covered time period. (Code of Civil Procedure §1179.04(b).) This means the informational notice is not required if the only unpaid rental payments at issue in the action came due after February 1, 2021. It would be helpful to include this limitation on the statutory requirement in the instructions.</p> <p>CAA recommends that the following instructional text be added to Section 7(a): <i>(Code of Civil Procedure Section 1179.04 requires the notice to be served on tenants who as of February 1, 2021, have not paid one or more rental payments that came due between March 1, 2020, and June 30, 2021.)</i></p>	<p>The committee declines this suggestion. The committee has concluded that, while the language proposed by CAA is one possible interpretation of the statutory requirement, it is not the only interpretation. The statute could also be read to require that for those tenants who default on payments at a later time, the informational notice must be served before the service of any termination notice. (Code Civ. Proc., § 1179.04(d).) For that reason, the committee declines the suggestion that the text be changed. Instead, as proposed, the relevant item in both form UD-101 and form UD-105 will continue to state that the notice was served “as required by Code of Civil Procedure section 1179.04” without putting a more specific time frame into the form.</p>

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

ISSUE 5: Form UD-105 – Item 3r		
Commenter	Comment	Committee Response
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	The Answer defense (r)(2) contains an error in the dates. That subsection reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: “Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple months’ rent.	The committee agrees and is recommending that item 3r be revised in light of this and other comments.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	The Answer defense (r)(2) contains an error in the dates. That subsection reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: “Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple months’ rent.	See response to Bay Area Lega Aid on this issue.
California Apartment Association	Section 3(r) The references in this section to “rent” and “COVID-19-related debt” should	The committee is recommending modifications in light of this comment. Note

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ISSUE 5: Form UD-105 – Item 3r		
Commenter	Comment	Committee Response
By Heidi Palutke Education, Policy and Compliance Counsel Sacramento	<p>be consistent – and incorporate the definitions of “COVID-19 rental debt” and “Covered time period” from the statute. (Code of Civil Procedure § 1179.02.) In addition, the requirement in Civil Code Section 1179.04.5 that payments be applied to prospective rent, rather than COVID-19 rental debt only applies prospectively. It does not apply to any application of a payment by a landlord prior to the law’s effective date of January 29, 2021.</p> <p>Specifically, CAA recommends the following changes: Section 3(r)</p> <p>(1) Plaintiff applied a security deposit to rent or another financial obligation under the tenancy due between March 1, 2020, and June 30, 2021, without the tenant’s written permission.</p> <p>(2) Between March 1, 2020 January 29, 2021, and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt rent or another financial obligation under the tenancy due between March 1, 2020, and June 30, 2021, other than the prospective month’s rent, without tenant’s written agreement.</p>	that the proposal also removes the time delimiter in item 3(r)(2) as it is not supported by statute.
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	<p>First, and probably most importantly, we believe that the language contained in the proposed UD-105 answer form at 3(r)(2) misstates the law by suggesting that landlords are only prohibited from using rolling ledger accounting to apply payments toward COVID-19 debt until June 30, 2021. In fact, as the underlying statute makes clear, the prohibition on rolling ledger accounting continues to apply beyond June 30, 2021.</p> <p>The relevant clause in 3(r)(2) of the proposed Answer form reads: “<i>Between March 1, 2020 and June 30, 2021</i>, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” (Emphasis added.) In contrast to this language, <i>the statute restricting rolling ledger accounting does not include any such time limitation</i>. The statute reads:</p>	See response to Bay Area Lega Aid on this issue.

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ISSUE 5: Form UD-105 – Item 3r		
Commenter	Comment	Committee Response
	<p>Notwithstanding Sections 1470, 1947, and 1950 of the Civil Code, or any other law, for the duration of any tenancy that existed during the covered time period, the landlord shall not do either of the following:</p> <p>(a) Apply a security deposit to satisfy COVID-19 rental debt, unless the tenant has agreed, in writing, to allow the deposit to be so applied. Nothing in this subdivision shall prohibit a landlord from applying a security deposit to satisfy COVID-19 rental debt after the tenancy ends, in accordance with Section 1950.5 of the Civil Code.</p> <p>(b) Apply a monthly rental payment to any COVID-19 rental debt other than the prospective month’s rent, unless the tenant has agreed, in writing, to allow the payment to be so applied. (Civ. Code § 1179.04.5.1) [now Code Civ. Proc. § 1179.04.5.1]</p> <p>The deliberate omission of a time limitation is absolutely critical to the entire framework behind SB 91. Under SB 91, so long as a tenant timely returns a declaration of financial hardship and pays at least 25 percent of the rent accruing between September 1, 2020 and June 30, 2021, any remaining unpaid balance for the period March 1, 2020 to June 30, 2021 is converted into consumer debt and cannot form the basis for an eviction. For eviction purposes, in other words, tenants get a fresh start on paying rent as of July 1, 2021. If landlords can simply use rolling ledger accounting to apply their tenant’s July 2021 rent payment toward the unpaid balance, however, there is no fresh start. Extraordinary numbers of tenants would then face eviction for failing to pay July 2021 rent, not because they did not tender a monthly rent payment to the landlord at the beginning of July, but because the landlord took the proffered payment and applied it to the unpaid balance instead of July’s rent. For this reason, 3(r)(2) of the Answer form must be revised. We suggest: “The plaintiff applied a monthly rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.”</p>	

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

ISSUE 5: Form UD-105 – Item 3r		
Commenter	Comment	Committee Response
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	The Answer defense (r)(2) contains an error in the dates. That subsection reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: “Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple months’ rent.	See response to Bay Area Lega Aid on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	The Answer defense (r)(2) contains an error in the dates. That subsection reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: “Plaintiff applied a rental payment to COVID-19- related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that Section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple months’ rent.	See response to Bay Area Lega Aid on this issue.
Public Advocates, Inc.	The Answer defense (r)(2) contains an error in the dates. That subsection	See response to Bay Area Lega Aid on this

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

ISSUE 5: Form UD-105 – Item 3r		
Commenter	Comment	Committee Response
By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead, this language should read: “Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple months’ rent.	issue..
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	The Answer defense (r)(2) contains an error. That subsection reads “Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month’s rent, without tenant’s written agreement.” This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: “Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month’s rent, without tenant’s written agreement.” Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month’s rent. This could lead to eviction for tenants who are paying current rent, which is the exact problem Civil Code section 1179.04.5 is intended to prevent. In addition, the word “monthly” should be omitted to avoid any confusion about payments made to cover 25% of multiple month’s rent.	Item 3r has been revised in light of this and other comments.

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Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

ISSUE 6: Form UD-105 -- Landlord’s Action re Rental Assistance		
Commenter	Comment	Committee Response
<p>Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel</p>	<p>SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.</p> <p>I n addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.</p>	<p>In considering this comment, the committee notes that SB 91 does not “specifically state” anything regarding refusal to accept rental assistance. However, in light of this and other comments relating to new Health & Safety Code section 50897.1(i), the committee has added a reference in item 3/ to the FEHA unlawful practices statute (Gov. Code, § 12955).</p> <p>In addition, in light of this and other comments, a new item has been added asserting that plaintiff refused to accept payment from a third party, citing to the FEHA unlawful practices section, and to Civil Code section 1947.3, which generally precludes a landlord from refusing to accept payments from third parties.</p>
<p>Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles</p>	<p>SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.</p> <p>In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.</p>	<p>See response to Bay Areal Legal Aid comment on this issue.</p>

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

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	Comment	Committee Response
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	Finally, we would recommend that you consider including an additional checkbox under affirmative defenses on the UD-105 Answer Form. This new checkbox would correspond to the provisions in SB 91 that make it clear that payments from the rental assistance program are “sources of income” for which the tenant cannot be discriminated against under the Fair Employment and Housing Act. (Health & Saf. Code § 50897.1(i).) Although such an affirmative defense falls within the broader category of affirmative defenses contemplated by 3(f), only very sophisticated tenants are likely to know that. We therefore respectfully suggest an additional affirmative defense checkbox that reads: “By serving defendant with the notice to quit or filing the complaint, plaintiff is discriminating against the defendant because some of the defendant’s rent was paid by a rental assistance program. (Health & Saf. Code § 50897.1(i).)”	The committee considered this comment, but declines to add the suggested item, both because it is vague and duplicative of the existing item on discriminatory action. The committee has, however, in light of this and other comments, added cross references to the FEHA statutes invoked by the new Health and Safety Code provision to other items on the answer.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(1) l referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(1) l referring to retaliation could be	See response to Bay Areal Legal Aid comment on this issue.

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ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	Comment	Committee Response
Policy San Francisco	<p>amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.</p> <p>In addition, there should be a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.</p>	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	<p>SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.</p> <p>In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.</p>	See response to Bay Areal Legal Aid comment on this issue.
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	<p>SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. Health & Safety Code section 50897.1(i). This specific defense should be easily identifiable in section (3) of the Answer form. Please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.</p> <p>In addition, the language of 3(l) referring to retaliation should be amended to</p>	See response to Bay Areal Legal Aid comment on this issue.

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

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	Comment	Committee Response
	allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.	

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ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	Comment	Committee Response
<p>Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel</p>	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>As explained in prior comment letters, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.</p>	<p>In light of this and other comments, a new defense has been added, asserting the plaintiff’s failure to provide a reasonable accommodation for a defendant with a disability. (See item 3t on form UD-105.) The committee declines to add an advisory to defendants on this form, as it is a pleading form in which defendant is to respond to the allegations in a complaint. Should information sheets be developed for UD actions, as the committee hopes to do in the future, the suggestion will be considered at that time.</p>
<p>Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles</p>	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>As explained in prior comment letters, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.</p>	<p>See response to Bay Areal Legal Aid comment on this issue.</p>

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ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	Comment	Committee Response
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.</p>	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>People with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, making fair housing protections for tenants with disabilities facing eviction particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not</p>	See response to Bay Areal Legal Aid comment on this issue.

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

ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	Comment	Committee Response
	realize that refusal to accommodate constitutes discrimination.	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.</p>	See response to Bay Areal Legal Aid comment on this issue.
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	<p>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act’s provisions related to reasonable accommodations for people with disabilities, among other topics.</p> <p>As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.</p>	See response to Bay Areal Legal Aid comment on this issue.

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Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)

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

ISSUE 8: Form UD-105 – Request for Jury		
Commenter	Comment	Committee Response
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	The committee declines this suggestion. No such item exists on the form complaint or on any other Judicial Council pleading form. This request is outside the scope of this proposal and would be a significant change. Moreover, such a request may be made using the current <i>Request/Counter Request to Set for Trial</i> (form UD-105), as explained at the California Courts Online Self-Help Center
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As raised in prior comment letters, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Lit. and Policy San Francisco	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. It would greatly simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.

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Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants’ ability to exercise their constitutional right to a jury.	

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ISSUE 9: Form UD-105 – Other comments		
Commenter	Comment	Committee Response
<p>California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento</p>	<p>UD-105 Answer-Unlawful Detainer Section 3(m)(6) A tenant who submits a declaration of COVID-19 financial distress qualifies for the prohibitions on late and increased fees in Civil Code Section 1942.0. However, to qualify for the protections that result from making the 25% payment, high-income tenants must have also complied with the documentation requirement, if applicable. Separating the defense related to the payment of 25% of the rent makes it clearer that the preconditions are different. CAA recommends that Section 3(m)(6) be revised as follows to address this distinction.</p> <p>Section 3(m)(6) ____ Defendant delivered to plaintiff one or more declarations of COVID-19-related financial distress. (Code Civ. Proc., § 1179.03(f).) (Describe when and how delivered and check all other items below that apply).</p> <p>(a) ____ Plaintiff’s demand for payment includes late fees on rent or other financial obligations <u>under the tenancy</u> that came due between March 1, 2020, and June 30, 2021.</p> <p>(b) ____ Plaintiff’s demand for payment includes fees for services that were increased or not previously charged.</p> <p>(c) ____ Defendant, on or before June 30, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and June 30, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a) <u>and documentation if required of a high-income tenant</u>. (Code Civ. Proc., §1179.03(g)(2).)</p>	<p>Item 3m has been further revised in light of this comment, with a reference to the documentation required of a high-income tenant now included.</p>
<p>Legal Services of Northern California By Olive Ehlinger</p>	<p>The UD Answer should remove elements of an Unlawful Detainer cause of action for which Plaintiffs bear the burden from the affirmative defenses section.</p>	<p>The committee agrees that item 3 on form UD-105 now contains matters on which the plaintiff bears the burden of proof. All</p>

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ISSUE 9: Form UD-105 – Other comments		
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<p>Managing Attorney Vallejo</p>	<p>Paragraph 3 of the UD Answer form prompts defendants to assert “Defenses and Objections,” but contains multiple elements for which a UD plaintiff actually bears the burden. In general, any issue on which defendant bears the burden of proof at trial must be specially pleaded in the answer. <i>Harris v. City of Santa Monica</i> (2013) 56 Cal. App. 4th 203, 239. However, a precursor to cause of action for unlawful detainer is the termination of valid notice to terminate tenancy. <i>Kwok v. Bergren</i> (1982) 130 Cal. App. 3d 596. Additionally, because unlawful detainer is a summary proceeding, a plaintiff must strictly comply with the statutory notice requirements. <i>Lamey v. Masciotra</i> (1969) 273 Cal. App. 2d. 709. Therefore, a UD defendant never bears the burden showing a notice is defective; it is the plaintiff’s obligation to plead and present evidence that their notice is fully compliant with all applicable statutes.</p> <p>In the experience of LSNC’s advocates, the distinction between an affirmative defense and an unlawful detainer Plaintiff’s prima facie case is mostly academic in practice. However, LSNC advocates have observed trial courts frequently prohibiting unrepresented defendants from raising evidence tied to affirmative defenses which the defendant did not raise in their answer. In the instance where a plaintiff has a defective notice and the defendant fails to check the appropriate box in Paragraph 3 corresponding to the defect, this may lead to a defendant being able to dispute a plaintiff’s prima facie case. This is especially salient in light of Code of Civil Proc. section 1173, which allows unlawful detainer Plaintiffs to amend their complaints according to proof at trial. LSNC advocates have observed local trial courts using this section 1173 to grant unlawful detainer judgments to plaintiffs on termination notices which the plaintiff alleged on the day of trial and, thus, defendants had no meaningful opportunity to dispute. As much, pleadings that clearly distinguish which party bears the burden of proving a disputed element will better protect the rights of unrepresented litigants.</p>	<p>but one of the items identified by the commenter were added to the answer form at the express request of Tenant Advocates following the enactment of AB 3088 (the other was added at their request earlier, following the enactment of the Tenant Protection Act), so that the form could serve as a kind of checklist of the defenses that a tenant might raise under the new laws. There is nothing in the form that indicates that it is a defendant’s obligation to plead or prove these various defenses. In fact, the committee changed the title of the item (formerly called “Affirmative Defenses”) for just this reason.</p> <p>The committee declines the suggestion to reorganize the items based on burden of proof at this time.</p>

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ISSUE 9: Form UD-105 – Other comments		
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	<p>The UD-105 form currently lists the following defenses that are the plaintiff’s burden under the “Defenses and Objections” section:</p> <ul style="list-style-type: none"> -3(h): Plaintiff’s demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act; -3(m): Plaintiff’s demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021; -3(n): (For cases filed before July 1, 2021) Plaintiff’s demand for possession of a residential tenancy is based on a reason other than nonpayment of rent or other financial obligations, and plaintiff lacks just cause for termination of the tenancy, as defined in Civil Code section 1946.2(b) or Code of Civil Procedure section 1179.03.5(a)(3)(A); and -3(q) Plaintiff violated the federal CARES Act, because the property is covered by that act and the federally backed mortgage on the property was in forbearance when plaintiff brought the action or the plaintiff did not give the required 30 days’ notice. (15 U.S.C. § 9058(c).) <p>LSNC recommends that the UD forms somehow distinguish between elements that the defendant bears the burden to prove and those for which the Plaintiff bears the burden. UD-105 can do so by separating “Defenses” and “Objections” within Paragraph 3 and instructing the defendant that they bear the burden to prove “Defenses” and the plaintiff bears the burden to overcome “Objections.” LSNC recognizes that this distinction may go beyond the scope of this particular invitation for comments, and that the Judicial Council is balancing presenting all the new elements of the COVID Tenant Relief Act with creating a functional form. However, as the COVID Tenant Relief Act Provisions expire and UD-105 faces new revisions, the Judicial Council will have additional opportunities to clarify how UD defendants can assert defects in the plaintiff’s prima facie case.</p>	